

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
INSURANCE FEES AND TAXES, CONSUMER INTERESTS,
HEALTH INSURANCE AND RELATED PRODUCTS, TITLE INSURANCE,
AND INSURANCE INDUSTRY PROFESSIONALS

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1 notify the person of an increase in the amount of
2 premium payment if:
3 (1) the insurance contract or certificate
4 contains a schedule of increasing premiums when
5 issued, expressly specifies the exact amount of each
6 premium, and specifies the period for which each such
7 premium is payable; or
8 (2) the increase is the result of a change
9 ordered by the insured.
10 (e) This article does not apply to an increase
11 in premium payment that is less than \$10 or ten percent
12 of the previous amount per month.

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13 CHAPTER 551. PROHIBITED PRACTICES RELATING TO DECLINATION,
14 CANCELLATION, AND NONRENEWAL OF INSURANCE POLICIES

15 SUBCHAPTER A. GENERAL REQUIREMENTS

16 Revised Law

17 Sec. 551.001. RULES. (a) The commissioner may, as
18 necessary, adopt and enforce reasonable rules, including notice
19 requirements, relating to the cancellation and nonrenewal of any
20 insurance policy regulated by the department under Chapter 5, other
21 than:

- 22 (1) a policy subject to Subchapter B or C; or
- 23 (2) a marine insurance policy other than inland
- 24 marine.

25 (b) In adopting rules under this section, the commissioner
26 shall consider the reasonable needs of the public and the
27 operations of the insurers. (V.T.I.C. Art. 21.49-2 (part).)

28 Source Law

29 Art. 21.49-2. The State Board of Insurance is
30 authorized, as it finds necessary, to prescribe,
31 adopt, promulgate, and enforce reasonable rules and
32 regulations as to the cancellation and the nonrenewal
33 of all policies of insurance, other than policies
34 subject to Section 21.49-2A or 21.49-2B of this code or
35 marine insurance policies other than inland marine,
36 regulated by the Board pursuant to Chapter 5, Texas
37 Insurance Code, including notice requirements
38 thereof, applicable to all of those policies. . . . In
39 prescribing and adopting such rules and regulations,

1 the Board will give consideration to the reasonable
2 needs of the public and to the operations of the
3 insurance companies. . . .

4 Revisor's Note

5 (1) V.T.I.C. Article 21.49-2 refers to the State
6 Board of Insurance. Chapter 685, Acts of the 73rd
7 Legislature, Regular Session, 1993, abolished the
8 board and transferred its functions to the
9 commissioner of insurance and the Texas Department of
10 Insurance. Throughout this chapter, references to the
11 board have been changed appropriately.

12 (2) V.T.I.C. Article 21.49-2 refers to the
13 authority to "prescribe, adopt, promulgate, and
14 enforce" rules. The revised law omits the references
15 to "prescribe" and "promulgate" because, in context,
16 those terms are included within the meaning of
17 "adopt," and "adopt" is the term used by the
18 Administrative Procedure Act (Chapter 2001,
19 Government Code).

20 (3) V.T.I.C. Article 21.49-2 refers to "rules
21 and regulations." The revised law omits the reference
22 to "regulations" because under Section 311.005(5),
23 Government Code (Code Construction Act), a rule is
24 defined to include a regulation. That definition
25 applies to the revised law.

26 (4) V.T.I.C. Article 21.49-2 provides that the
27 State Board of Insurance may "alter or amend, as it
28 deems necessary, any and all of the rules and
29 regulations prescribed and adopted by it." The
30 revised law omits this provision as unnecessary. The
31 authority to adopt rules includes the authority to
32 alter or amend those rules. The omitted law reads:

33 Art. 21.49-2. . . . The Board shall
34 have authority to alter or amend, as it
35 deems necessary, any and all of the rules
36 and regulations prescribed and adopted by
37 it.

1 the applicant or policyholder that violate the
2 guideline or guidelines;

3 (2) state the source of information the
4 insurer relied on regarding the incident,
5 circumstance, or risk factor or factors; and

6 (3) specify any other information deemed
7 relevant by the commissioner.

8 (b) The commissioner is authorized and directed
9 to issue rules necessary to implement this article.

10 Revisor's Note

11 Section (b), V.T.I.C. Article 21.49-2E, states
12 that the commissioner "is authorized and directed to
13 issue rules." Because the article "directs" the
14 commissioner to adopt rules, the law is revised as a
15 statement of a duty required of the commissioner. The
16 revised law uses the term "adopt" rather than "issue"
17 in the context of rules for the reasons stated in
18 Revisor's Note (2) to Section 551.001.

19 Revised Law

20 Sec. 551.003. IMMUNITY FROM LIABILITY. An insurer or agent
21 or an employee of an insurer or agent is not liable, and a cause of
22 action does not arise against that individual or entity, for a
23 statement, disclosure, or communication made in good faith under
24 this subchapter. Immunity under this section does not apply to:

25 (1) disclosure of information known to be false; or

26 (2) a disclosure made with malice or the wilful intent
27 to injure any person. (V.T.I.C. Art. 21.49-2 (part).)

28 Source Law

29 Art. 21.49-2. . . . There shall be no liability
30 on the part of, and no cause of action shall arise
31 against any insurer or agent or employees of the
32 insurer or agent, for any statements, disclosures, or
33 communications made in good faith by them under this
34 article; except there shall be no immunity under this
35 article for a disclosure of information known to be
36 false or a disclosure with malice or wilful intent to
37 injure any person. . . .

38 [Sections 551.004-551.050 reserved for expansion]

39 SUBCHAPTER B. CANCELLATION AND NONRENEWAL OF CERTAIN 40 LIABILITY INSURANCE POLICIES

41 Revised Law

42 Sec. 551.051. DEFINITIONS. In this subchapter:

1 (1) "Insurer" means an insurance company or other
2 entity admitted to engage in business and authorized to write
3 liability insurance in this state, including a county mutual
4 insurance company, a Lloyd's plan, and a reciprocal or
5 interinsurance exchange. The term does not include a county mutual
6 fire insurance company that writes exclusively industrial fire
7 insurance as described by Section 912.310 or a farm mutual
8 insurance company.

9 (2) "Liability insurance" means:

- 10 (A) general liability insurance;
11 (B) professional liability insurance other than
12 medical professional liability insurance;
13 (C) commercial automobile liability insurance;
14 (D) commercial multiperil insurance; and
15 (E) any other type or line of liability insurance
16 designated by the department. (V.T.I.C. Art. 21.49-2A, Sec. (a).)

17 Source Law

18 Art. 21.49-2A. (a) In this article:

19 (1) "Liability insurance" means the
20 following types of insurance:

- 21 (A) general liability;
22 (B) professional liability other
23 than medical professional liability;
24 (C) commercial automobile liability;
25 (D) commercial multiperil coverage;
26 and

27 (E) any other types or lines of
28 liability insurance designated by the State Board of
29 Insurance.

30 (2) "Insurer" means each insurance company
31 or other entity admitted to do business and authorized
32 to write liability insurance in this state, including
33 county mutual insurance companies, Lloyd's plan
34 companies, and reciprocal or interinsurance exchanges
35 but excluding farm mutual insurance companies and
36 county mutual fire insurance companies writing
37 exclusively industrial fire insurance as defined by
38 Article 17.02 of this code.

39 Revised Law

40 Sec. 551.052. CANCELLATION PROHIBITED; EXCEPTIONS. (a)
41 An insurer may not cancel a liability insurance policy that is a
42 renewal or continuation policy.

43 (b) An insurer may not cancel a liability insurance policy
44 during the initial policy term after the 60th day following the date

1 on which the policy was issued.

2 (c) Notwithstanding Subsections (a) and (b), an insurer may
3 cancel a liability insurance policy at any time during the term of
4 the policy for:

5 (1) fraud in obtaining coverage;

6 (2) failure to pay premiums when due;

7 (3) an increase in hazard within the control of the
8 insured that would produce a rate increase; or

9 (4) loss of the insurer's reinsurance covering all or
10 part of the risk covered by the policy.

11 (d) Notwithstanding Subsections (a) and (b), an insurer may
12 cancel a liability insurance policy at any time during the term of
13 the policy if the insurer is placed in supervision,
14 conservatorship, or receivership and the cancellation or
15 nonrenewal is approved or directed by the supervisor, conservator,
16 or receiver. (V.T.I.C. Art. 21.49-2A, Secs. (b), (c).)

17 Source Law

18 (b) Except as provided by Section (c) of this
19 article, an insurer may not cancel:

20 (1) a policy of liability insurance that
21 is a renewal or continuation policy; or

22 (2) a policy of liability insurance that
23 is in its initial policy period after the 60th day
24 following the date on which the policy was issued.

25 (c) An insurer may cancel the policy at any time
26 during the term of the policy for the following
27 reasons:

28 (1) fraud in obtaining coverage;

29 (2) failure to pay premiums when due;

30 (3) on an increase in hazard within the
31 control of the insured which would produce an increase
32 in rate;

33 (4) loss of the insurer's reinsurance
34 covering all or part of the risk covered by the policy;
35 or

36 (5) on an insurer being placed in
37 supervision, conservatorship, or receivership, if the
38 cancellation or nonrenewal is approved or directed by
39 the supervisor, conservator, or receiver.

40 Revised Law

41 Sec. 551.053. WRITTEN NOTICE OF CANCELLATION
42 REQUIRED. Not later than the 10th day before the date on which the
43 cancellation of a liability insurance policy takes effect, an
44 insurer must deliver or mail written notice of the cancellation to

1 the first-named insured under the policy at the address shown on the
2 policy. (V.T.I.C. Art. 21.49-2A, Sec. (d).)

3 Source Law

4 (d) An insurer must deliver or mail to the
5 first-named insured under a liability insurance policy
6 at the address shown on the policy written notice of
7 cancellation of the policy not less than the 10th day
8 before the date on which the cancellation takes
9 effect.

10 Revised Law

11 Sec. 551.054. WRITTEN NOTICE OF NONRENEWAL REQUIRED. (a)
12 An insurer may refuse to renew a liability insurance policy if the
13 insurer delivers or mails written notice of the nonrenewal to the
14 first-named insured under the policy at the address shown on the
15 policy.

16 (b) The notice must be delivered or mailed not later than
17 the 60th day before the date on which the policy expires. If the
18 notice is delivered or mailed later than the 60th day before the
19 date on which the policy expires, the coverage remains in effect
20 until the 61st day after the date on which the notice is delivered
21 or mailed.

22 (c) Earned premium for any period of coverage that extends
23 beyond the expiration date of the policy shall be computed pro rata
24 based on the previous year's rate. (V.T.I.C. Art. 21.49-2A, Sec.
25 (e).)

26 Source Law

27 (e) An insurer may refuse to renew a policy if
28 the insurer delivers or mails to the first-named
29 insured written notice of the nonrenewal of the policy
30 at the address shown on the policy. The notice must be
31 delivered or mailed not later than the 60th day before
32 the date on which the policy expires. If notice is
33 delivered or mailed later than the 60th day before the
34 date on which the policy expires, the coverage shall
35 remain in effect until the 61st day after the date on
36 which the notice is delivered or mailed. Earned
37 premium for any period of coverage that extends beyond
38 the expiration date of the policy shall be computed pro
39 rata based on the previous year's rate.

40 Revised Law

41 Sec. 551.055. REASON FOR CANCELLATION OR NONRENEWAL
42 REQUIRED. In a notice to an insured relating to cancellation or

1 refusal to renew, an insurer must state the reason for the
2 cancellation or nonrenewal. The statement must comply with:

- 3 (1) Sections 551.002(b) and (c); and
4 (2) rules adopted under Section 551.002(d). (V.T.I.C.
5 Art. 21.49-2A, Sec. (g); Art. 21.49-2E, Sec. (a) (part).)

6 Source Law

7 [Art. 21.49-2A]

8 (g) In notice to an insured relating to
9 cancellation or refusal to renew, the insurer must
10 state the reason for the cancellation or nonrenewal.

11 Art. 21.49-2E. (a) [An insurer's written
12 statement giving the reason or reasons for
13 cancellation, declination, or nonrenewal of an
14 insurance policy required by Articles 21.49-2,
15 21.49-2A, and [21.49-2B of this code shall fully
16 explain a decision which adversely affects an
17 applicant or policyholder by denying the applicant or
18 policyholder coverage or continued coverage, and such
19 statements shall:]
20 . . .

21 Revised Law

22 Sec. 551.056. TRANSFER NOT CONSIDERED REFUSAL TO
23 RENEW. For purposes of this subchapter, the transfer of a
24 policyholder between admitted companies within the same insurance
25 group is not considered a refusal to renew. (V.T.I.C. Art.
26 21.49-2A, Sec. (f).)

27 Source Law

28 (f) For purposes of this article, the transfer
29 of a policyholder between admitted companies within
30 the same insurance group is not considered a refusal to
31 renew.

32 [Sections 551.057-551.100 reserved for expansion]

33 SUBCHAPTER C. CANCELLATION AND NONRENEWAL OF CERTAIN PROPERTY
34 AND CASUALTY POLICIES

35 Revised Law

36 Sec. 551.101. DEFINITION. In this subchapter, "insurer"
37 means any authorized insurer writing property and casualty
38 insurance in this state, including:

- 39 (1) a county mutual insurance company;
40 (2) a Lloyd's plan;
41 (3) a reciprocal or interinsurance exchange; and

1 (4) a farm mutual insurance company. (V.T.I.C. Art.
2 21.49-2B, Sec. 1(1).)

3 Source Law

4 Art. 21.49-2B

5 Sec. 1. In this article:

6 (1) "Insurer" means any licensed insurer
7 writing property and casualty insurance in this state,
8 including:

9 (A) a county mutual insurance
10 company;

11 (B) a Lloyd's plan company;

12 (C) a reciprocal or interinsurance
13 exchange; and

14 (D) a farm mutual company.

15 Revisor's Note

16 Section 1(1), V.T.I.C. Article 21.49-2B, refers
17 to a "licensed" insurer writing property and casualty
18 insurance. The revised law substitutes "authorized"
19 for "licensed" for consistency of terminology in this
20 code.

21 Revised Law

22 Sec. 551.102. APPLICABILITY OF SUBCHAPTER. This
23 subchapter applies only to:

24 (1) a personal automobile insurance policy, other than
25 a policy written through the Texas Automobile Insurance Plan
26 Association;

27 (2) a homeowners or farm or ranch owners insurance
28 policy;

29 (3) a standard fire insurance policy insuring:

30 (A) a one-family dwelling or a duplex; or

31 (B) the contents of a one-family dwelling, a
32 duplex, or an apartment; or

33 (4) an insurance policy providing property and
34 casualty coverage, other than a fidelity, surety, or guaranty bond,
35 to:

36 (A) this state;

37 (B) an agency of this state;

38 (C) a political subdivision of this state,
39 including:

(i) a municipality or county;
(ii) a school district or junior college district;
(iii) a levee improvement district, drainage district, or irrigation district;
(iv) a water improvement district, water control and improvement district, or water control and preservation district;
(v) a freshwater supply district;
(vi) a navigation district;
(vii) a conservation and reclamation district;
(viii) a soil conservation district;
(ix) a communication district; and
(x) a river authority; or
(D) any other governmental agency whose authority is derived from the laws or constitution of this state.
(V.T.I.C. Art. 21.49-2B, Secs. 1(2), 2.)

Source Law

Sec. 1. In this article:

(2) "Governmental unit" means:

(A) the state;
(B) an agency of the state;
(C) a political subdivision of the state, including a municipality, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, and river authority; and
(D) any other agency of government whose authority is derived from the laws or constitution of this state.

Sec. 2. This article applies only to:

(1) a personal automobile insurance policy, other than a policy written through the Texas Automobile Insurance Plan;
(2) a homeowners or farm or ranch owner's policy;
(3) a standard fire policy insuring a one-family dwelling, a duplex, or the contents of a one-family dwelling, a duplex, or an apartment; and
(4) a policy providing property and casualty coverage to a governmental unit, other than a

1 fidelity, surety, or guaranty bond.

2 Revised Law

3 Sec. 551.103. CANCELLATION. For the purposes of this
4 subchapter, an insurer has canceled an insurance policy if the
5 insurer, without the consent of the insured:

6 (1) terminates coverage provided under the policy;

7 (2) refuses to provide additional coverage to which
8 the insured is entitled under the policy; or

9 (3) reduces or restricts coverage under the policy by
10 endorsement or other means. (V.T.I.C. Art. 21.49-2B, Sec. 3.)

11 Source Law

12 Sec. 3. For the purposes of this article, an
13 insurer has cancelled an insurance policy if the
14 insurer, without the consent of the insured:

15 (1) terminates coverage provided under a
16 policy;

17 (2) refuses to provide additional coverage
18 to which the insured is entitled under the policy; or

19 (3) reduces or restricts coverage under a
20 policy by endorsement or other means.

21 Revised Law

22 Sec. 551.104. AUTHORIZED CANCELLATION OF POLICIES. (a) An
23 insurer may cancel an insurance policy only as provided by this
24 section.

25 (b) An insurer may cancel any policy if:

26 (1) the named insured does not pay any portion of the
27 premium when due;

28 (2) the insured submits a fraudulent claim; or

29 (3) the department determines that continuation of the
30 policy would result in a violation of this code or any other law
31 governing the business of insurance in this state.

32 (c) An insurer may cancel a policy, other than a personal
33 automobile insurance policy, if there is an increase in the hazard
34 covered by the policy that is within the control of the insured and
35 that would produce an increase in the premium rate of the policy.

36 (d) An insurer may cancel a personal automobile insurance
37 policy if the driver's license or motor vehicle registration of the
38 named insured or any other motor vehicle operator who resides in the

1 same household as the named insured or who customarily operates an
2 automobile covered by the policy is suspended or revoked. An
3 insurer may not cancel a policy under this subsection if the named
4 insured consents to an endorsement terminating coverage under the
5 policy for the person whose license is suspended or revoked.

6 (e) Cancellation of a policy under Subsection (b), (c), or
7 (d) does not take effect until the 10th day after the date the
8 insurer mails notice of the cancellation to the insured.

9 (f) An insurer may cancel a personal automobile insurance
10 policy effective on any 12-month anniversary of the original
11 effective date of the policy if the insurer mails to the named
12 insured written notice of the cancellation not later than the 30th
13 day before the effective date of the cancellation.

14 (g) An insurer may cancel a personal automobile insurance
15 policy if the policy has been in effect less than 60 days. An
16 insurer may cancel any other insurance policy if the policy has been
17 in effect less than 90 days. (V.T.I.C. Art. 21.49-2B, Sec. 4.)

18 Source Law

19 Sec. 4. (a) An insurer may cancel an insurance
20 policy covered by this article only as provided by this
21 section.

22 (b) An insurer may cancel a policy if the named
23 insured does not pay the premium or any portion of the
24 premium when due.

25 (c) An insurer may cancel a policy if the board
26 determines that continuation of the policy would
27 result in a violation of this code or any other law
28 governing the business of insurance in this state.

29 (d) An insurer may cancel a policy if the
30 insured submits a fraudulent claim.

31 (e) An insurer may cancel a personal automobile
32 insurance policy if the driver's license or motor
33 vehicle registration of the named insured or any other
34 motor vehicle operator who resides in the same
35 household as the named insured or who customarily
36 operates an automobile covered by the policy is
37 suspended or revoked. An insurer may not cancel a
38 policy under this subsection if the named insured
39 consents to an endorsement terminating coverage under
40 the policy for the person whose license is suspended or
41 revoked.

42 (f) An insurer may cancel a policy, other than a
43 personal automobile insurance policy, if there is an
44 increase in the hazard covered by the policy that is
45 within the control of the insured and that would
46 produce an increase in the premium rate of the policy.

47 (g) Cancellation of a policy under Subsection
48 (b), (c), (d), (e), or (f) of this section does not
49 take effect until the 10th day after the date the

insurer mails notice of the cancellation to the insured.

(h) An insurer may cancel a personal automobile insurance policy with the cancellation taking effect on any 12-month anniversary of the original effective date of the policy but only if the insurer mails to the named insured written notice of the cancellation not later than the 30th day before the effective date of the cancellation.

(i) An insurer may cancel a personal automobile insurance policy if it has been in effect less than 60 days. An insurer may cancel any other policy if it has been in effect less than 90 days.

Revisor's Note

Section 4(a), V.T.I.C. Article 21.49-2B, refers to an insurance policy "covered by this article." The revised law omits the quoted language as unnecessary. Section 2, V.T.I.C. Article 21.49-2B, revised as Section 551.102, specifies the insurance policies to which V.T.I.C. Article 21.49-2B, revised as this subchapter, applies.

Revised Law

Sec. 551.105. NONRENEWAL OF POLICIES; NOTICE REQUIRED. Unless the insurer has mailed written notice of nonrenewal to the insured not later than the 30th day before the date on which the insurance policy expires, an insurer must renew an insurance policy, at the request of the insured, on the expiration of the policy. (V.T.I.C. Art. 21.49-2B, Secs. 5, 11(b).)

Source Law

Sec. 5. An insurer shall renew a policy on its expiration, at the option of the insured, unless the insurer has mailed written notice of nonrenewal to the insured not later than the 30th day before the date on which the policy expires.

[Sec. 11]

(b) If an insurer fails to give notice of nonrenewal of a policy as required by Section 5 of this article, the insurer shall renew the policy at the request of the insured.

Revised Law

Sec. 551.106. RENEWAL OF PERSONAL AUTOMOBILE INSURANCE POLICIES. (a) An insurer may not refuse to renew a personal automobile insurance policy solely because of the age of the person covered by the policy.

1 (b) An insurer shall renew a personal automobile insurance
2 policy that was written for a term of less than one year, except
3 that the insurer may refuse to renew the policy on any 12-month
4 anniversary of the original effective date of the policy.
5 (V.T.I.C. Art. 21.49-2B, Sec. 6.)

6 Source Law

7 Sec. 6. (a) An insurer may not decline to renew
8 a personal automobile insurance policy solely because
9 of the age of the person covered by the policy.

10 (b) An insurer shall renew a personal automobile
11 insurance policy that was written for a period of less
12 than one year, except that the insurer may decline to
13 renew the policy on any 12-month anniversary of the
14 original effective date of the policy.

15 Revised Law

16 Sec. 551.107. RENEWAL OF CERTAIN POLICIES; PREMIUM
17 SURCHARGE AUTHORIZED; NOTICE. (a) This section applies only to a
18 standard fire, homeowners, or farm or ranch owners insurance
19 policy.

20 (b) A claim under this section does not include a claim:

21 (1) resulting from a loss caused by natural causes; or

22 (2) that is filed but is not paid or payable under the
23 policy.

24 (c) An insurer may assess a premium surcharge at the time an
25 insurance policy is renewed if the insured has filed two or more
26 claims in the preceding policy year. The insurer may assess an
27 additional premium surcharge if an additional claim is made in the
28 following policy year. The department shall set the amount of any
29 surcharge that may be assessed under this subsection. The amount of
30 the surcharge may not exceed 10 percent of the total premium,
31 including any premium surcharge, actually paid by the insured in
32 the preceding policy year.

33 (d) Subject to Subsection (e), an insurer may refuse to
34 renew an insurance policy if the insured has filed three or more
35 claims under the policy in any three-year period.

36 (e) An insurer may notify an insured who has filed two
37 claims in a period of less than three years that the insurer may

1 refuse to renew the policy if the insured files a third claim during
2 the three-year period. If the insurer does not notify the insured
3 in accordance with this subsection, the insurer may not refuse to
4 renew the policy because of losses. The notice form must:

5 (1) list the policyholder's claims; and

6 (2) contain the sentence: "Another non-weather
7 related loss could cause us to refuse to renew your policy."

8 (f) An insurer that renews the insurance policy of an
9 insured who has filed three or more claims under the policy in a
10 three-year period may assess a premium surcharge in an amount set by
11 the department. (V.T.I.C. Art. 21.49-2B, Sec. 7.)

12 Source Law

13 Sec. 7. (a) This section applies only to
14 standard fire, homeowners', and farm or ranch owners'
15 insurance policies. A claim under this section does
16 not include:

17 (1) a claim resulting from a loss caused by
18 natural causes; or

19 (2) a claim that is filed but is not paid
20 or payable under the policy.

21 (b) An insurer may assess a premium surcharge at
22 the time a policy is renewed if the insured has filed
23 two or more claims in the preceding policy year. The
24 insurer may assess an additional premium surcharge if
25 an additional claim is made in the following policy
26 year. The board shall set the amount of any surcharge
27 that may be assessed under this subsection, except
28 that the amount of the surcharge may not exceed 10
29 percent of the total premium, including any premium
30 surcharge, actually paid by the insured in the
31 preceding policy year.

32 (c) An insurer may decline to renew a policy if
33 the insured has filed three or more claims under the
34 policy in any three-year period.

35 (d) An insurer may notify an insured who has
36 filed two claims in a period of less than three years
37 that the insurer may decline to renew the policy if the
38 insured files a third claim during the three-year
39 period. If the insurer does not notify the insured in
40 accordance with this subsection, the insurer may not
41 refuse to renew the policy because of losses. The
42 notice form must list the policyholder's claims and
43 contain the sentence: "Another non-weather related
44 loss could cause us to refuse to renew your policy."

45 (e) An insurer that renews the policy of an
46 insured who has filed three or more claims under the
47 policy in a three-year period may assess a premium
48 surcharge in an amount set by the board.

49 Revised Law

50 Sec. 551.108. INSURER RECORDS. (a) An insurer shall
51 maintain information regarding cancellation or nonrenewal of

1 insurance policies in accordance with the insurer's ordinary
2 practices for maintaining records of expired policies.

3 (b) The insurer shall make the information available to the
4 department on request. (V.T.I.C. Art. 21.49-2B, Sec. 8.)

5 Source Law

6 Sec. 8. An insurer shall maintain information
7 concerning cancellation or nonrenewal of policies in
8 accordance with the insurer's ordinary practices for
9 maintaining records of expired policies. The insurer
10 shall make the information available to the department
11 on request.

12 Revised Law

13 Sec. 551.109. INSURER STATEMENT. An insurer shall, at the
14 request of an applicant for insurance or an insured, provide a
15 written statement of the reason for a declination, cancellation, or
16 nonrenewal of an insurance policy. The statement must comply with:

17 (1) Sections 551.002(b) and (c); and

18 (2) rules adopted under Section 551.002(d). (V.T.I.C.
19 Art. 21.49-2B Sec. 9; Art. 21.49-2E, Sec. (a) (part).)

20 Source Law

21 [Art. 21.49-2B]

22 Sec. 9. An insurer shall, at the request of an
23 insured or an applicant for insurance, provide a
24 written statement of the reason for a cancellation or
25 nonrenewal of or determination not to issue a policy.

26 Art. 21.49-2E. (a) [An insurer's written
27 statement giving the reason or reasons for
28 cancellation, declination, or nonrenewal of an
29 insurance policy required by Articles 21.49-2,
30 21.49-2A, and] 21.49-2B [of this code shall fully
31 explain a decision which adversely affects an
32 applicant or policyholder by denying the applicant or
33 policyholder coverage or continued coverage, and such
34 statements shall:]

35 Revised Law

36 Sec. 551.110. LIABILITY FOR DISCLOSURE. An insurer or
37 agent or an employee of an insurer or agent is not liable for a
38 statement or disclosure made in good faith under this subchapter
39 unless the statement or disclosure was:

40 (1) known to be false; or

41 (2) made with malice or wilful intent to injure any
42 person. (V.T.I.C. Art. 21.49-2B, Sec. 10.)

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Sec. 10. An insurer or agent or an employee of an insurer or agent is not liable for a statement or disclosure made in good faith under this article unless the statement or disclosure was known to be false or was made with malice or wilful intent to injure any person.

8

Sec. 551.111. EFFECT OF NONCOMPLIANCE. A cancellation of an insurance policy made in violation of this subchapter has no effect. (V.T.I.C. Art. 21.49-2B, Sec. 11(a).)

2

Sec. 11. (a) A cancellation of a policy in violation of this article has no effect.

5

Sec. 551.112. RULES. The commissioner may adopt rules relating to the cancellation and nonrenewal of insurance policies. (V.T.I.C. Art. 21.49-2B, Sec. 12.)

9

Sec. 12. The board may adopt rules not in conflict with this article relating to the cancellation and nonrenewal of policies covered by this article.

4

(1) Section 12, V.T.I.C. Article 21.49-2B, authorizes the State Board of Insurance to adopt rules "not in conflict with this article" (meaning Article 21.49-2B) relating to the cancellation and nonrenewal of insurance policies covered by Article 21.49-2B. The revised law omits the quoted language as unnecessary because a state officer or agency does not have the authority to take an action that conflicts with a statute.

(2) Section 12, V.T.I.C. Article 21.49-2B, refers to insurance policies "covered by this article." The revised law omits the quoted language for the reason stated in the revisor's note to Section 551.104.

[Sections 551.113-551.150 reserved for expansion]

SUBCHAPTER D. CANCELLATION OR NONRENEWAL OF CERTAIN POLICIES
ISSUED TO ELECTED OFFICIALS

Revised Law

Sec. 551.151. DEFINITION. In this subchapter, "insurer" has the meaning assigned by Section 551.101. (V.T.I.C. Art. 21.49-2D, Sec. (a).)

Source Law

Art. 21.49-2D. (a) In this article, "insurer" has the meaning assigned by Section 1(1), Article 21.49-2B, of this code.

Revised Law

Sec. 551.152. ELECTED OFFICIALS. An insurer may not cancel or refuse to renew an insurance policy based solely on the fact that the policyholder is an elected official. (V.T.I.C. Art. 21.49-2D, Sec. (b).)

Source Law

(b) An insurer may not cancel or refuse to renew a policy or contract of insurance based solely on the fact that the policyholder in question is an elected official.

CHAPTER 552. ILLEGAL PRICING PRACTICES

Sec. 552.001.	APPLICABILITY OF CHAPTER.	415
Sec. 552.002.	FRAUDULENT INSURANCE ACT.	415
Sec. 552.003.	CHARGING DIFFERENT PRICES; OFFENSE	416

CHAPTER 552. ILLEGAL PRICING PRACTICES

Revised Law

Sec. 552.001. APPLICABILITY OF CHAPTER. This chapter does not apply to the provision of a health care service to a:

(1) Medicaid or Medicare patient; or

(2) medically indigent person who qualifies for a sliding fee scale. (V.T.I.C. Art. 21.79F, Sec. (d).)

Source Law

(d) This article does not apply to the provision of health care services to Medicaid or Medicare patients or to medically indigent persons who qualify for sliding fee scales.

Revised Law

Sec. 552.002. FRAUDULENT INSURANCE ACT. An offense under

Section 552.003 is a fraudulent insurance act under Chapter 701.
(V.T.I.C. Art. 21.79F, Sec. (c).)

Source Law

(c) An offense under this article is a fraudulent insurance act for the purpose of Article 1.10D of this code.

Revised Law

Sec. 552.003. CHARGING DIFFERENT PRICES; OFFENSE. (a) A person commits an offense if:

(1) the person knowingly or intentionally charges two different prices for providing the same product or service; and

(2) the higher price charged is based on the fact that an insurer will pay all or part of the price of the product or service.

(b) An offense under this section is a Class B misdemeanor.
(V.T.I.C. Art. 21.79F, Secs. (a), (b).)

Source Law

Art. 21.79F. (a) A person commits an offense if the person intentionally or knowingly charges two different prices for providing the same product or service, where the higher price is based on the fact that an insurer will pay all or part of the price of the product or service.

(b) An offense under this article is a Class B misdemeanor.

CHAPTER 553. ENFORCEMENT OF INSURANCE POLICIES REGARDING
HOLOCAUST VICTIMS

Sec. 553.001.	DEFINITIONS	416
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CHAPTER 553. ENFORCEMENT OF INSURANCE POLICIES REGARDING
HOLOCAUST VICTIMS

Revised Law

Sec. 553.001. DEFINITIONS. In this chapter:

(1) "Holocaust victim" means a person who was killed or injured, or who lost financial assets or other property, as the result of discriminatory laws, policies, or actions directed

1 against any discrete group of which the person was a member, during
2 the period of 1920 to 1945, inclusive, in Germany, areas occupied by
3 Germany, or countries allied with Germany.

4 (2) "Insurance policy" includes:

5 (A) a life insurance policy, an annuity, a
6 property insurance policy, a casualty insurance policy, and a
7 liability insurance policy; and

8 (B) reinsurance on a risk covered under a policy
9 described by Paragraph (A).

10 (3) "Insurer" means an insurance company or other
11 entity engaged in the business of insurance or reinsurance in this
12 state. The term includes:

13 (A) a capital stock company, a mutual company, or
14 a Lloyd's plan; and

15 (B) any parent, subsidiary, or affiliated
16 company, at least 50 percent of the stock of which is in common
17 ownership with an insurer engaged in the business of insurance in
18 this state. (V.T.I.C. Art. 21.74, Sec. 1.)

19 Source Law

20 Art. 21.74

21 Sec. 1. In this article:

22 (1) "Holocaust victim" means a person who
23 was killed or injured, or who lost real or personal
24 property or financial assets, as the result of
25 discriminatory laws, policies, or actions directed
26 against any discrete group of which the person was a
27 member, during the period of 1920 to 1945, inclusive,
28 in Germany, areas occupied by Germany, or countries
29 allied with Germany.

30 (2) "Insurer" means an insurance company
31 or other entity engaged in the business of insurance or
32 reinsurance in this state. The term includes:

33 (A) a capital stock company, a mutual
34 company, or a Lloyd's plan; and

35 (B) any parent, subsidiary, or
36 affiliated company, at least 50 percent of the stock of
37 which is in common ownership with an insurer engaged in
38 the business of insurance in this state.

39 (3) "Insurance policy" includes a life
40 insurance policy, an annuity, a property insurance
41 policy, a casualty insurance policy, and a liability
42 insurance policy. The term includes reinsurance on a
43 risk covered under such a policy.

44 Revisor's Note

45 Section 1(1), V.T.I.C. Article 21.74, refers to

1 "real or personal property." The revised law omits the
2 reference to "real or personal" and refers only to
3 "property" because under Section 311.005(4),
4 Government Code (Code Construction Act), "property"
5 includes "real property" and "personal property."

6 Revised Law

7 Sec. 553.002. SUSPENSION OF LIMITATIONS PERIOD. (a)
8 Notwithstanding any other law, a Holocaust victim, or the heir,
9 assignee, beneficiary, or successor of a Holocaust victim, who
10 resides in this state and has a claim arising out of an insurance
11 policy purchased or in effect in Europe before 1946 that was
12 delivered, issued for delivery, or renewed by an insurer may bring
13 an action in this state against an insurer to recover on that claim.

14 (b) An action brought under this section before December 31,
15 2012, may not be dismissed for failure to comply with any applicable
16 limitations period. (V.T.I.C. Art. 21.74, Sec. 2.)

17 Source Law

18 Sec. 2. (a) Notwithstanding any other law, a
19 Holocaust victim, or the heir, assignee, beneficiary,
20 or successor of a Holocaust victim, who resides in this
21 state and has a claim arising out of an insurance
22 policy purchased or in effect in Europe before 1946
23 that was delivered, issued for delivery, or renewed by
24 an insurer may bring an action against an insurer to
25 recover on that claim in a court of competent
26 jurisdiction in this state.

27 (b) An action brought under Subsection (a) of
28 this section may not be dismissed for failure to comply
29 with any applicable limitations period if the action
30 is brought before December 31, 2012.

31 Revisor's Note

32 Section 2(a), V.T.I.C. Article 21.74, refers to
33 an action brought "in a court of competent
34 jurisdiction." The revised law omits the quoted
35 language as unnecessary because an action may only be
36 brought in a court, and the general laws of civil
37 jurisdiction determine which courts have jurisdiction
38 over the matter. For example, see Sections
39 24.007-24.011, Government Code, for the general
40 jurisdiction of district courts.

1 Revised Law

2 Sec. 553.003. VIOLATION BY INSURER. An insurer violates
3 this chapter if the insurer fails to comply with a claim brought
4 under this chapter by:

5 (1) denying the claim on the grounds that the claim is
6 not timely; or

7 (2) asserting a statute of limitations defense in an
8 action brought under Section 553.002. (V.T.I.C. Art. 21.74, Sec.
9 3(a).)

10 Source Law

11 Sec. 3. (a) Failure by an insurer to comply
12 with a claim brought under this article by denying the
13 claim on the grounds that the claim is not timely or by
14 asserting a statute of limitations defense in an
15 action brought under Section 2(a) of this article
16 constitutes a violation of this article.

17 Revised Law

18 Sec. 553.004. EXAMINATION; ENFORCEMENT. (a) If the
19 commissioner considers it necessary, the commissioner may initiate
20 an examination of an insurer under Article 1.15.

21 (b) If the commissioner believes that an insurer is
22 violating or has violated this chapter, the commissioner may:

23 (1) impose a sanction under Chapter 82;

24 (2) issue a cease and desist order under Chapter 83;

25 (3) assess an administrative penalty under Chapter 84;

26 or

27 (4) refer the matter to the attorney general for
28 appropriate enforcement. (V.T.I.C. Art. 21.74, Secs. 3(b), (c).)

29 Source Law

30 (b) If the commissioner considers it to be
31 necessary, the commissioner may initiate an
32 examination under Article 1.15 of this code.

33 (c) If the commissioner believes that a
34 violation of this article by an insurer has occurred or
35 is occurring, the commissioner may:

36 (1) impose sanctions under Chapter 82 of
37 this code;

38 (2) issue a cease and desist order under
39 Chapter 83 of this code;

40 (3) assess an administrative penalty under
41 Chapter 84 of this code; or

42 (4) refer the matter to the attorney
43 general for appropriate enforcement.

1	CHAPTER 554. BURDEN OF PROOF AND PLEADING	
2	Sec. 554.001. APPLICABILITY OF CHAPTER.	420
3	Sec. 554.002. BURDEN OF PROOF AND PLEADING.	422
4	CHAPTER 554. BURDEN OF PROOF AND PLEADING	
5	<u>Revised Law</u>	
6	Sec. 554.001. APPLICABILITY OF CHAPTER. This chapter	
7	applies to each insurer or health maintenance organization engaged	
8	in the business of insurance or the business of a health maintenance	
9	organization in this state, regardless of form and however	
10	organized, including:	
11	(1) a stock life, health, or accident insurance	
12	company;	
13	(2) a mutual life, health, or accident insurance	
14	company;	
15	(3) a stock fire or casualty insurance company;	
16	(4) a mutual fire or casualty insurance company;	
17	(5) a Mexican casualty insurance company;	
18	(6) a Lloyd's plan;	
19	(7) a reciprocal or interinsurance exchange;	
20	(8) a fraternal benefit society;	
21	(9) a title insurance company;	
22	(10) an attorney's title insurance company;	
23	(11) a stipulated premium company;	
24	(12) a nonprofit legal services corporation;	
25	(13) a statewide mutual assessment company;	
26	(14) a local mutual aid association;	
27	(15) a local mutual burial association;	
28	(16) an association exempt under Section 887.102;	
29	(17) a nonprofit hospital, medical, or dental service	
30	corporation, including a corporation subject to Chapter 842;	
31	(18) a county mutual insurance company;	
32	(19) a farm mutual insurance company; and	
33	(20) an insurer or health maintenance organization	

engaged in the business of insurance or the business of a health maintenance organization in this state that does not hold a certificate of authority issued by the department or is not otherwise authorized to engage in business in this state. (V.T.I.C. Art. 21.58, Subsec. (a).)

Source Law

Art. 21.58. (a) This article applies to any insurer doing business in this state, including:

(1) a domestic or foreign, stock and mutual, life, health, or accident insurance company;

(2) a domestic or foreign, stock and mutual, fire and casualty insurance company;

(3) a Mexican casualty company;

(4) a domestic or foreign Lloyd's plan insurer;

(5) a domestic or foreign or reciprocal or interinsurance exchange;

(6) a domestic or foreign fraternal benefit society;

(7) a domestic or foreign title insurance company;

(8) an attorney's title insurance company;

(9) a stipulated premium insurance company;

(10) a nonprofit legal service corporation;

(11) a statewide mutual assessment company;

(12) a local mutual aid association;

(13) a local mutual burial association;

(14) an association exempt under Article 14.17 of this code;

(15) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 20 of this code;

(16) a health maintenance organization;

(17) a county mutual insurance company;

(18) a farm mutual insurance company; or

(19) an insurer doing business in this state that does not hold a certificate of authority from the department. It is intended that this article apply to all insurance companies doing business in this state, regardless of form and however organized, including insurers not authorized to do business in this state.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 21.58, provides that "insurer" includes certain "domestic or foreign" insurers. The revised law omits the reference to "domestic or foreign" as unnecessary. Because the revised law applies to all insurers engaged in business in this state, it is not necessary to distinguish between domestic and foreign insurers

1 in this section.

2 (2) Subsection (a), V.T.I.C. Article 21.58,
3 refers to "any insurer doing business in this state,"
4 including various listed entities. Included among the
5 listed entities is a "health maintenance
6 organization," which is not a traditional insurer.
7 The revised law accordingly substitutes a reference to
8 an "insurer or health maintenance organization" and
9 makes other necessary conforming changes throughout
10 this chapter.

11 Revised Law

12 Sec. 554.002. BURDEN OF PROOF AND PLEADING. In a suit to
13 recover under an insurance or health maintenance organization
14 contract, the insurer or health maintenance organization has the
15 burden of proof as to any avoidance or affirmative defense that the
16 Texas Rules of Civil Procedure require to be affirmatively pleaded.
17 Language of exclusion in the contract or an exception to coverage
18 claimed by the insurer or health maintenance organization
19 constitutes an avoidance or an affirmative defense. (V.T.I.C. Art.
20 21.58, Subsec. (b).)

21 Source Law

22 (b) In any suit to recover under a contract of
23 insurance, the insurer has the burden of proof as to
24 any avoidance or affirmative defense that must be
25 affirmatively pleaded under the Texas Rules of Civil
26 Procedure. Any language of exclusion in the policy and
27 any exception to coverage claimed by the insurer
28 constitutes an avoidance or an affirmative defense.

29 Revisor's Note

30 Subsection (b), V.T.I.C. Article 21.58, refers to
31 "a contract of insurance" and a "policy," which are
32 types of documents that are not typically used by
33 health maintenance organizations. The revised law
34 substitutes references to "an insurance or health
35 maintenance organization contract" and a "contract" to
36 reflect the clear intent of the legislature to apply
37 the substance of the provision to health maintenance

1 organizations and the documents used by health
2 maintenance organizations.

3 CHAPTER 555. FAILURE TO SATISFY JUDGMENT

4 Sec. 555.001. APPLICABILITY OF CHAPTER. 423

5 Sec. 555.002. REVOCATION OF CERTIFICATE OF AUTHORITY. 423

6 CHAPTER 555. FAILURE TO SATISFY JUDGMENT

7 Revised Law

8 Sec. 555.001. APPLICABILITY OF CHAPTER. This chapter does
9 not apply to an insurer subject to Chapter 841. (V.T.I.C. Art.
10 21.36 (part).)

11 Source Law

12 Art. 21.36. [Should any insurance company,
13 except those designated in Article 3.61 of this
14 code

15 Revisor's Note

16 V.T.I.C. Article 21.36 refers to insurance
17 companies "designated in Article 3.61 of this code."
18 V.T.I.C. Article 3.61, revised as Section 841.703,
19 applied to "any life insurance company, accident
20 insurance company, life and accident, health and
21 accident, or life, health and accident insurance
22 company." The provisions of Article 3.61 and related
23 articles were revised in Chapter 841, which applies to
24 life, health, or accident insurance companies. For
25 the reader's convenience, the revised law substitutes
26 a reference to Chapter 841 for the reference to Article
27 3.61.

28 Revised Law

29 Sec. 555.002. REVOCATION OF CERTIFICATE OF AUTHORITY. If
30 an execution issued on a final judgment rendered against an insurer
31 is not satisfied and discharged before the 31st day after the date
32 of notice of the execution's issuance, the insurer's certificate of
33 authority shall be revoked, and the insurer may not engage in the
34 business of insurance in this state until the execution is
35 satisfied. (V.T.I.C. Art. 21.36 (part).)

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Source Law

Art. 21.36. Should any insurance company, . . . fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty (30) days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, cancelled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied.

Revisor's Note

(1) V.T.I.C. Article 21.36 provides for revocation of a certificate of authority of a company that fails to "pay off" an execution. The revised law substitutes "satisfy" for the quoted language because, in context, the meaning is the same and "satisfy" is consistent with the use of similar terminology throughout this code.

(2) V.T.I.C. Article 21.36 refers to a "valid" judgment. The revised law omits "valid" as unnecessary because the word does not add to the clear meaning of the law. An invalid judgment is not a judgment.

(3) V.T.I.C. Article 21.36 provides that under certain circumstances a company's certificate of authority shall be "revoked, cancelled and annulled." The revised law omits "cancelled and annulled" as unnecessary because, in context, "cancelled" and "annulled" are included within the meaning of "revoked."

CHAPTER 556. UNFAIR METHODS OF COMPETITION AND UNFAIR PRACTICES
BY FINANCIAL INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

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20	CHAPTER 556. UNFAIR METHODS OF COMPETITION AND UNFAIR		
21	PRACTICES BY FINANCIAL INSTITUTIONS		
22	SUBCHAPTER A. GENERAL PROVISIONS		
23	<u>Revised Law</u>		
24	Sec. 556.001.	DEFINITIONS. In this chapter:	
25	(1)	"Affiliate" means a person who, directly or	
26		indirectly or through one or more intermediaries, controls or is	
27		controlled by another person or is under common control with	
28		another person.	
29	(2)	"Depository institution" has the meaning assigned	
30		by Section 4001.003. (V.T.I.C. Art. 21.21-9, Sec. 1, as added Acts	
31		75th Leg., R.S., Ch. 596.)	
32	<u>Source Law</u>		
33	Art. 21.21-9		
34	Sec. 1.	In this article:	
35	(1)	"Affiliate" means a person who,	

1 directly or indirectly or through one or more
2 intermediaries, controls or is controlled by another
3 person or is under common control with another person.

4 (2) "Bank" means a depository institution
5 as defined by Article 21.07 of this code.

6 Revisor's Note

7 Section 1(2), V.T.I.C. Article 21.21-9, as added
8 by Chapter 596, Acts of the 75th Legislature, Regular
9 Session, 1997, defines "bank" by incorporating the
10 definition of "depository institution" from V.T.I.C.
11 Article 21.07, revised in relevant part as Section
12 4001.003 of this code. "Depository institution," as
13 defined by Article 21.07, includes banks and several
14 other types of financial institutions. The revised
15 law substitutes "depository institution" for "bank" as
16 the defined term and uses that term throughout this
17 chapter to more accurately describe the entities to
18 which this chapter applies.

19 Revised Law

20 Sec. 556.002. RULES. The commissioner may adopt
21 reasonable rules to comply with federal law applicable to the sale
22 of insurance and for the implementation and administration of this
23 chapter. (V.T.I.C. Art. 21.21-9, Sec. 7, as added Acts 75th Leg.,
24 R.S., Ch. 596.)

25 Source Law

26 Sec. 7. The commissioner may adopt reasonable
27 rules to comply with federal law applicable to the sale
28 of insurance and for the implementation and
29 administration of this article.

30 [Sections 556.003-556.050 reserved for expansion]

31 SUBCHAPTER B. UNFAIR METHODS OR PRACTICES

32 Revised Law

33 Sec. 556.051. UNFAIR METHOD OF COMPETITION OR UNFAIR
34 PRACTICE: TYING. (a) A depository institution engages in an
35 unfair method of competition or an unfair practice in the sale of
36 insurance by the depository institution if the depository
37 institution:

38 (1) is an agent and, as a condition of extending or

1 renewing credit, leasing or selling property, or furnishing
2 services, requires the purchase of insurance from the depository
3 institution or a subsidiary or affiliate of the depository
4 institution, or from or through a particular agent, insurer, or any
5 other person or entity;

6 (2) conditions the terms of credit or the sale or lease
7 of property on acquisition of insurance from or through the
8 depository institution, a subsidiary or affiliate of the depository
9 institution, or any other particular person or entity;

10 (3) rejects a required policy solely because the
11 policy has been issued or underwritten by a person or entity that is
12 not associated with the depository institution; or

13 (4) imposes a requirement on an agent or broker who is
14 not associated with the depository institution that is not imposed
15 on an agent or broker who is associated with the depository
16 institution or a subsidiary or affiliate of the depository
17 institution.

18 (b) This section does not prevent a person who lends money
19 or extends credit from placing insurance on property if the
20 mortgagor, borrower, or purchaser fails to provide required
21 insurance in accordance with the terms of the loan or credit
22 document. (V.T.I.C. Art. 21.21-9, Secs. 2(a) (part), (b), as added
23 Acts 75th Leg., R.S., Ch. 596.)

24 Source Law

25 Sec. 2. (a) The following are unfair methods of
26 competition and unfair practices in the sale of
27 insurance by banks:

28 (1) Tying. (A) When the agent is a bank,
29 requiring the purchase of insurance from the bank, its
30 subsidiary or affiliate, or from or through any
31 particular agent, solicitor, insurer, or any other
32 person or entity, as a condition of extending or
33 renewing credit, leasing or selling property, or
34 furnishing services;

35 (B) Conditioning the terms of credit
36 or the sale or lease of property on acquisition of
37 insurance from or through the bank, its subsidiary or
38 affiliate, or any other particular person or entity;

39 (C) Rejecting any required policy
40 solely because that policy has been issued or
41 underwritten by a person or entity who is not
42 associated with the bank; or

43 (D) Imposing any requirement on an

1 agent or broker not associated with the bank that is
2 not imposed on an agent or broker who is associated
3 with the bank or the bank's subsidiary or affiliate;
4 and
5

6 (b) Subsection (a)(1) of this section does not
7 prevent a person who lends money or extends credit from
8 placing insurance on real or personal property if the
9 mortgagor, borrower, or purchaser has failed to
10 provide required insurance in accordance with the
11 terms of the loan or credit document.

12 Revisor's Note

13 (1) Section 2(a)(1), V.T.I.C. Article 21.21-9,
14 as added by Chapter 596, Acts of the 75th Legislature,
15 Regular Session, 1997, refers to the purchase of
16 insurance from or through "any particular agent,
17 solicitor, insurer, or any other person or entity."
18 The revised law omits the reference to "solicitor"
19 because that term, as it relates to a particular type
20 of person engaged in the business of insurance, was
21 eliminated by Chapter 703, Acts of the 77th
22 Legislature, Regular Session, 2001, and a person who
23 performs the duties formerly performed by a solicitor
24 is now regulated as an "agent."

25 (2) Section 2(b), V.T.I.C. Article 21.21-9, as
26 added by Chapter 596, Acts of the 75th Legislature,
27 Regular Session, 1997, refers to insurance on "real or
28 personal property." The revised law omits the
29 reference to "real or personal" because under Section
30 311.005(4), Government Code (Code Construction Act),
31 "property" includes both real and personal property.
32 That definition applies to the revised law.

33 Revised Law

34 Sec. 556.052. UNFAIR METHOD OF COMPETITION OR UNFAIR
35 PRACTICE: FAILURE TO DISCLOSE. A depository institution engages
36 in an unfair method of competition or an unfair practice in the sale
37 of insurance by the depository institution if, on the premises of
38 the depository institution or in connection with a product offering
39 of the depository institution, the depository institution sells or

1 solicits the purchase of insurance or a person sells or solicits the
2 purchase of insurance recommended or sponsored by the depository
3 institution and the depository institution or person fails to
4 clearly disclose in all promotional materials relating to an
5 insurance product distributed to customers and potential customers
6 that:

7 (1) an insurance product sold through or in the
8 depository institution or a subsidiary or affiliate of the
9 depository institution is not insured by the Federal Deposit
10 Insurance Corporation;

11 (2) the insurance product is not issued, guaranteed,
12 or underwritten by the depository institution or the Federal
13 Deposit Insurance Corporation; and

14 (3) the insurance product involves investment risk, if
15 appropriate, including potential loss of principal. (V.T.I.C. Art.
16 21.21-9, Sec. 2(a) (part), as added Acts 75th Leg., R.S., Ch. 596.)

17 Source Law

18 (a) The following are unfair methods of
19 competition and unfair practices in the sale of
20 insurance by banks:

21 . . .
22 (2) Bank affiliated agent disclosures.
23 When a bank is soliciting the purchase of or is selling
24 insurance, or any person is soliciting the purchase of
25 or is selling insurance recommended or sponsored by
26 the bank, on the premises of the bank, or in connection
27 with a product offering of the bank, failing to
28 disclose clearly in all promotional materials relating
29 to insurance products that are distributed to
30 customers and potential customers that:

31 (A) insurance products sold through
32 or in the bank or its subsidiary or affiliate are not
33 insured by the Federal Deposit Insurance Corporation;

34 (B) the products are not issued,
35 guaranteed, or underwritten by the bank or the Federal
36 Deposit Insurance Corporation; and

37 (C) the products involve investment
38 risk, if appropriate, including potential loss of
39 principal.

40 [Sections 556.053-556.100 reserved for expansion]

41 SUBCHAPTER C. REGULATION OF PRACTICES

42 Revised Law

43 Sec. 556.101. PROHIBITION ON CERTAIN REFERRALS OR
44 SOLICITATIONS TO PURCHASE INSURANCE. (a) An individual who is an

1 employee or agent of a depository institution or a subsidiary or
2 affiliate of a depository institution may not directly or
3 indirectly make a referral related to insurance to, or solicit the
4 purchase of any insurance by, a customer knowing that the customer
5 has applied for a loan or other extension of credit from a financial
6 institution, before:

7 (1) the customer receives a written commitment
8 relating to that loan or extension of credit; or

9 (2) if a written commitment has not been or will not be
10 issued in connection with the loan or extension of credit, the
11 customer receives notification of approval of that loan or
12 extension of credit by the financial institution and the financial
13 institution creates a written record of the approval.

14 (b) This section does not prohibit a depository institution
15 from:

16 (1) informing a customer that insurance is required in
17 connection with a loan;

18 (2) contacting a person in the course of a direct or
19 mass mailing to a group of persons in a manner that is not related to
20 the person's loan application or credit decision; or

21 (3) selling credit life, credit disability, credit
22 property, or involuntary unemployment insurance that is:

23 (A) specifically authorized by this code;

24 (B) approved for sale in this state; and

25 (C) sold in connection with a credit transaction.

26 (c) This section does not apply to an insurance policy
27 described by Section 556.151. (V.T.I.C. Art. 21.21-9, Secs. 3(c),
28 (e) (part), as added Acts 75th Leg., R.S., Ch. 596.)

29 Source Law

30 (c) An individual who is an employee or agent of
31 a bank, or a subsidiary or affiliate of a bank, may
32 not, directly or indirectly, make an insurance-related
33 referral related to, or solicit the purchase of any
34 insurance from, a customer knowing that the customer
35 has applied for a loan or extension of credit from a
36 financial institution, before the customer has
37 received a written commitment with respect to that
38 loan or extension of credit, or, if a written

1 commitment has not been or will not be issued in
2 connection with the loan or extension of credit,
3 before the customer receives notification of approval
4 of the loan or extension of credit by the person and
5 that person creates a written record of the loan or
6 extension of credit approval. This subsection does
7 not prohibit a bank from:

8 (1) informing a customer that insurance is
9 required in connection with a loan;

10 (2) contacting persons in the course of a
11 direct or mass mailing to a group of persons in a
12 manner that is not related to the person's loan
13 application or credit decision; or

14 (3) selling credit life, credit
15 disability, credit property, or involuntary
16 unemployment insurance specifically authorized by
17 this code and approved for sale in this state, that is
18 sold in conjunction with a credit transaction.

19 (e) This section does not apply to a credit
20 life, credit accident and health, credit property, or
21 credit involuntary unemployment insurance policy
22 [that is otherwise specifically authorized by this
23 code, approved for sale in this state, and sold in
24 connection with a credit transaction].

25 Revisor's Note

26 Section 3(c), V.T.I.C. Article 21.21-9, as added
27 by Chapter 596, Acts of the 75th Legislature, Regular
28 Session, 1997, provides that certain actions may not
29 be taken in relation to a customer who has not been or
30 will not be issued a written commitment in connection
31 with a loan or extension of credit for which the
32 customer has applied "before the customer receives
33 notification of approval of the loan or extension of
34 credit by the person and that person creates a written
35 record of the loan or extension of credit approval."
36 In context, it is clear that "person" in the quoted
37 language means the "financial institution" from which
38 the customer has applied for the loan or extension of
39 credit, and the revised law is drafted accordingly.

40 Revised Law

41 Sec. 556.102. INSURANCE SALE WITH LOAN TRANSACTION. (a)
42 If insurance is offered or sold to a depository institution's
43 customer in connection with a loan transaction by the depository
44 institution, the insurance salesperson involved in that insurance
45 transaction may not be involved in that loan transaction and may not

1 be the person making that loan.

2 (b) This section does not apply to:

3 (1) a depository institution that has \$40 million or
4 less in total assets, as reported in the most recent Consolidated
5 Report of Condition and Income by the Federal Financial
6 Institutions Examination Council or any successor report required
7 by federal or state law; or

8 (2) a credit life, credit disability, credit property,
9 or involuntary unemployment insurance product that is:

10 (A) specifically authorized by this code;

11 (B) approved for sale in this state; and

12 (C) sold in connection with a credit transaction.

13 (V.T.I.C. Art. 21.21-9, Sec. 4, as added Acts 75th Leg., R.S., Ch.
14 596.)

15 Source Law

16 Sec. 4. (a) If insurance is offered or sold to a
17 bank customer in connection with a loan transaction by
18 a bank, the insurance sales person involved in that
19 insurance transaction may not be involved in that loan
20 transaction and may not also be the person making that
21 loan.

22 (b) This section does not apply to a bank that
23 has \$40 million or less in total assets, as reported on
24 the most recent Federal Financial Institutions
25 Examination Council (FFIEC) Consolidated Report of
26 Condition and Income or any successor report required
27 by federal or state law. In addition, this section
28 does not apply to a credit life, credit disability,
29 credit property, or involuntary unemployment
30 insurance product that is specifically authorized by
31 this code, approved for sale in this state, and sold in
32 conjunction with a credit transaction.

33 Revised Law

34 Sec. 556.103. DESIGNATION OF PLACE OF INSURANCE
35 ACTIVITIES. (a) The place where a depository institution sells or
36 solicits the purchase of insurance or the place on the premises of a
37 depository institution where insurance is sold or solicited for
38 purchase shall be clearly and conspicuously indicated by signs so
39 that the public can readily distinguish the sale or solicitation as
40 separate from the lending and deposit-taking activities of the
41 depository institution.

42 (b) The commissioner may grant a waiver from the

1 requirements of this section to a person who files a written request
2 that:

3 (1) demonstrates that, due to the size of the physical
4 premises of the person, compliance with the requirements is not
5 possible; and

6 (2) identifies other steps that will be taken to
7 minimize customer confusion. (V.T.I.C. Art. 21.21-9, Sec. 6, as
8 added Acts 75th Leg., R.S., Ch. 596.)

9 Source Law

10 Sec. 6. The place of solicitation or sale of
11 insurance by a bank or on the premises of a bank must be
12 clearly and conspicuously indicated by signs in order
13 to be readily distinguishable by the public as
14 separate and distinct from the lending and
15 deposit-taking activities of the bank. If a person who
16 would otherwise be subject to the requirements of this
17 section does not have the physical space to comply, the
18 commissioner may grant a waiver from the requirements
19 of this section on written request by that person
20 demonstrating that, due to the size of the physical
21 premises of the person, compliance is not possible if
22 the person also identifies other steps that will be
23 taken to minimize customer confusion.

24 Revisor's Note

25 Section 6, V.T.I.C. Article 21.21-9, as added by
26 Chapter 596, Acts of the 75th Legislature, Regular
27 Session, 1997, requires signs to indicate to the
28 public that the sale of insurance is "separate and
29 distinct" from the traditional activities of a
30 depository institution. The revised law omits
31 "distinct" because in this context "separate" and
32 "distinct" are synonymous.

33 Revised Law

34 Sec. 556.104. USE OF CUSTOMER INFORMATION. (a) In this
35 section:

36 (1) "Customer" means a person with an investment,
37 security, deposit, trust, or credit relationship with a financial
38 institution.

39 (2) "Nonpublic customer information" means
40 information relating to an individual that is derived from a bank

1 record, including information concerning insurance premiums, the
2 terms and conditions of insurance coverage, insurance expirations,
3 insurance claims, and insurance history of the individual. The
4 term does not include a customer's name, address, or telephone
5 number.

6 (b) A person may not use nonpublic customer information for
7 the purpose of selling or soliciting the purchase of insurance, or
8 provide nonpublic customer information to a third party for the
9 purpose of another's selling or soliciting the purchase of
10 insurance, unless:

11 (1) it is clearly and conspicuously disclosed that the
12 nonpublic customer information may be used for that purpose; and

13 (2) the customer has been provided an opportunity to
14 object before the time the information is used. (V.T.I.C. Art.
15 21.21-9, Sec. 5, as added Acts 75th Leg., R.S., Ch. 596.)

16 Source Law

17 Sec. 5. (a) In this section:

18 (1) "Customer" means a person with an
19 investment, security, deposit, trust, or credit
20 relationship with a financial institution.

21 (2) "Nonpublic customer information"
22 means information regarding an individual that is
23 derived from a bank record. The term does not include
24 customer names, addresses, and telephone numbers but
25 does include information concerning insurance
26 premiums, the terms and conditions of insurance
27 coverage, insurance expirations, insurance claims,
28 and insurance history of the individual.

29 (b) A person may not use nonpublic customer
30 information for the purpose of selling or soliciting
31 the purchase of insurance, or provide nonpublic
32 customer information to a third party for the purpose
33 of another's sale or solicitation of the purchase of
34 insurance, unless it is clearly and conspicuously
35 disclosed that the information may be so used and the
36 customer has been provided an opportunity to object
37 before the use of that information for this purpose.

38 [Sections 556.105-556.150 reserved for expansion]

39 SUBCHAPTER D. DISCLOSURES

40 Revised Law

41 Sec. 556.151. APPLICABILITY OF SUBCHAPTER. This
42 subchapter does not apply to a credit life, credit accident and
43 health, credit property, or credit involuntary unemployment
44 insurance policy that is:

1 (1) specifically authorized by this code;
2 (2) approved for sale in this state; and
3 (3) sold in connection with a credit transaction.
4 (V.T.I.C. Art. 21.21-9, Sec. 3(e), as added Acts 75th Leg., R.S.,
5 Ch. 596.)

6 Source Law

7 (e) This section does not apply to a credit
8 life, credit accident and health, credit property, or
9 credit involuntary unemployment insurance policy that
10 is otherwise specifically authorized by this code,
11 approved for sale in this state, and sold in connection
12 with a credit transaction.

13 Revised Law

14 Sec. 556.152. PROMOTIONAL MATERIALS DISCLOSURE. (a) This
15 section applies to each agent that is a depository institution or
16 that, on the premises of a depository institution or in connection
17 with a product offering of a depository institution, sells or
18 solicits the purchase of insurance recommended or sponsored by the
19 depository institution.

20 (b) Promotional materials relating to an insurance product
21 distributed to a customer or potential customer must clearly
22 disclose that an insurance product sold through an agent affiliated
23 with a depository institution:

24 (1) is not insured by the Federal Deposit Insurance
25 Corporation;

26 (2) is not issued, guaranteed, or underwritten by the
27 depository institution or the Federal Deposit Insurance
28 Corporation; and

29 (3) involves investment risk, if appropriate,
30 including potential loss of principal. (V.T.I.C. Art. 21.21-9,
31 Sec. 3(a), as added Acts 75th Leg., R.S., Ch. 596.)

32 Source Law

33 Sec. 3. (a) The following disclosure
34 requirements apply to each agent that is a bank, or
35 that solicits the purchase of or sells insurance
36 recommended or sponsored by a bank, on the premises of
37 a bank, or in connection with a product offering of a
38 bank. Promotional materials relating to insurance
39 products distributed to customers and potential
40 customers must clearly disclose that insurance

1 products sold through the bank affiliated agent:
2 (1) are not insured by the Federal Deposit
3 Insurance Corporation;
4 (2) are not issued, guaranteed, or
5 underwritten by the bank or the Federal Deposit
6 Insurance Corporation; and
7 (3) involve investment risk, if
8 appropriate, including potential loss of principal.

9 Revised Law

10 Sec. 556.153. DISCLOSURE AT TIME OF LOAN APPLICATION. (a)
11 At the time a loan application is made, a depository institution
12 shall provide to the customer a written disclosure as required by
13 this section and Section 556.154.

14 (b) The disclosure must be separate from any loan
15 application or loan document.

16 (c) The depository institution employee who presents the
17 disclosure and the customer shall sign and date the disclosure.

18 (d) The depository institution shall maintain one copy of
19 the disclosure in the loan file and shall provide one copy to the
20 customer. (V.T.I.C. Art. 21.21-9, Sec. 3(b) (part), as added Acts
21 75th Leg., R.S., Ch. 596.)

22 Source Law

23 (b) At the time a loan application is made, a
24 bank shall provide to the customer a written
25 disclosure in substantially the form provided by this
26 subsection. The disclosure form must be separate and
27 apart from any loan application or loan document. The
28 bank employee who presents the disclosure and the
29 customer shall sign and date the disclosure form. One
30 copy of the disclosure form shall be maintained by the
31 bank in the loan file and one copy shall be provided to
32 the customer for his or her records. . . .

33 Revisor's Note

34 Section 3(b), V.T.I.C. Article 21.21-9, as added
35 by Chapter 596, Acts of the 75th Legislature, Regular
36 Session, 1997, requires the disclosure to be "separate
37 and apart" from the loan application or documents. The
38 revised law omits "apart" because in this context
39 "separate" and "apart" are synonymous.

40 Revised Law

41 Sec. 556.154. FORM OF DISCLOSURE. (a) The disclosure
42 required by Section 556.153 must be in substantially the following

1 form:

2 "CUSTOMER DISCLOSURE

3 "You have applied for a loan with the depository institution.
4 As permitted by Title 4, Finance Code, the depository institution
5 is requiring that collateral used to secure the loan be insured to
6 cover the amount of the loan to the extent insurance is available on
7 the property to be insured, against the usual and customary
8 casualty losses.

9 "You have the right to provide this insurance either through
10 existing policies already owned or controlled by you or by
11 obtaining the insurance through any insurance agent or insurer
12 authorized to engage in business in Texas.

13 "The depository institution, through its own insurance
14 agency, can also make this insurance available to you. However,
15 federal and state laws provide that the depository institution
16 cannot require you to obtain insurance through the depository
17 institution, its subsidiary, an affiliate, or any particular
18 unaffiliated third party, either as a condition to obtaining this
19 credit or to obtain special terms or consideration.

20 "Insurance products sold through or in the depository
21 institution or its affiliate or subsidiary are not insured by the
22 Federal Deposit Insurance Corporation and are not issued,
23 guaranteed, or underwritten by the depository institution or the
24 Federal Deposit Insurance Corporation.

25 "You are not required or obligated to purchase insurance from
26 the depository institution or any subsidiary, affiliate, or
27 particular unaffiliated third party as a condition to obtaining
28 your loan, and your decision as to insurance agents will not affect
29 your credit terms in any way.

30 _____
31 Customer Date
32 _____

33 Employee of Depository Institution"

34 (b) The commissioner may amend the disclosure form as

1 necessary to comply with federal or state law. (V.T.I.C. Art.
2 21.21-9, Secs. 3(b) (part), (d), as added Acts 75th Leg., R.S., Ch.
3 596.)

4 Source Law

5 (b) . . . The disclosure must be in
6 substantially the following form:

7 "CUSTOMER DISCLOSURE

8 "You have applied for a loan with the bank. As
9 permitted by the Texas Credit Code, the bank is
10 requiring that collateral used to secure the loan be
11 insured to cover the amount of the loan to the extent
12 insurance is available on the property to be insured,
13 against the usual and customary casualty losses.

14 "You have the right to provide this insurance
15 either through existing policies already owned or
16 controlled by you or by procuring the insurance
17 through any insurance agent or company authorized to
18 transact business in Texas.

19 "The bank, through its own insurance agency, can
20 also make this insurance available to you. However,
21 federal and state laws provide that the bank cannot
22 require you to obtain insurance through the bank, its
23 subsidiary, an affiliate, or any particular
24 unaffiliated third party, either as a condition to
25 obtaining this credit or to obtain special terms or
26 consideration.

27 "Insurance products sold through or in the bank
28 or its affiliate or subsidiary are not insured by the
29 Federal Deposit Insurance Corporation and are not
30 issued, guaranteed, or underwritten by the bank or the
31 Federal Deposit Insurance Corporation.

32 "You are not required or obligated to purchase
33 insurance from the bank or any subsidiary, affiliate,
34 or particular unaffiliated third party as a condition
35 to obtaining your loan, and your decision as to
36 insurance agents will not affect your credit terms in
37 any way.

38 _____
39 Customer

Date

40 _____
41 Employee of Bank"

42 (d) The commissioner may amend the disclosure
43 form as necessary to comply with federal or state law.

44 Revisor's Note

45 Section 3(b), V.T.I.C. Article 21.21-9, as added
46 by Chapter 596, Acts of the 75th Legislature, Regular
47 Session, 1997, contains a customer notice that refers
48 to "the Texas Credit Code." Title 79, Revised Statutes
49 (Article 5069-1.01 et seq., Vernon's Texas Civil
50 Statutes), was informally referred to as the Texas
51 Credit Code. The pertinent part of Title 79 was

codified as Title 4, Finance Code, in 1997. The revised law is drafted accordingly.

CHAPTER 557. INSURED PROPERTY SUBJECT TO SECURITY INTEREST

SUBCHAPTER A. INSURANCE PROCEEDS HELD BY LENDER PENDING

REPAIR OF RESIDENTIAL REAL PROPERTY

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[Sections 557.007-557.050 reserved for expansion]

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CHAPTER 557. INSURED PROPERTY SUBJECT TO SECURITY INTEREST

SUBCHAPTER A. INSURANCE PROCEEDS HELD BY LENDER PENDING

REPAIR OF RESIDENTIAL REAL PROPERTY

Revised Law

Sec. 557.001. DEFINITIONS. In this subchapter:

(1) "Lender" means a person holding a mortgage, lien, deed of trust, or other security interest in property.

(2) "Residential real property" means:

(A) a single-family house;

(B) a duplex, triplex, or quadraplex; or

(C) a unit in a multi-unit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system. (V.T.I.C. Art. 21.48B, Sec. 1.)

Source Law

Art. 21.48B

Sec. 1. In this article:

(1) "Lender" means a person holding a mortgage, lien, deed of trust, or other security interest in property.

(2) "Residential real property" means a single-family house, a duplex, triplex, or quadrplex, or a unit in a multi-unit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

Revised Law

Sec. 557.002. NOTIFICATION BY LENDER TO INSURED CONCERNING INSURANCE PROCEEDS. (a) If a claim under an insurance policy for damage to residential real property is paid to the insured and a lender, and the lender holds all or part of the proceeds from the insurance claim payment pending completion of all or part of the repairs to the property, the lender shall notify the insured of each requirement with which the insured must comply for the lender to release the insurance proceeds.

(b) The notice required under this section must be provided not later than the 10th day after the date the lender receives payment of the insurance proceeds. (V.T.I.C. Art. 21.48B, Sec. 2(a).)

Source Law

Sec. 2. (a) If a claim under an insurance policy for damage to residential real property is paid to the insured and a lender holding a security interest in the property, and the lender holds all or part of the insurance claim payment pending completion of all or part of the repairs, the lender not later than the 10th day after the date the payment of the insurance proceeds is received shall notify the insured of the requirements that the insured must satisfy before the lender releases the insurance proceeds.

Revisor's Note

Section 2(a), V.T.I.C. Article 21.48B, refers to a lender "holding a security interest in the property." The revised law omits the quoted language as unnecessary because Section 1(1), V.T.I.C. Article 21.48B, revised as Section 557.001(1), defines "lender" as a person holding a "security interest in property."

1 Revised Law

2 Sec. 557.003. LENDER'S RELEASE OR REFUSAL TO RELEASE
3 INSURANCE PROCEEDS. Not later than the 10th day after the date a
4 lender receives from the insured a request for release of all or
5 part of the insurance proceeds held by the lender, the lender shall:

6 (1) if the lender has received sufficient evidence of
7 the insured's compliance with the requirements specified by the
8 lender under Section 557.002 for release of the proceeds, release
9 to the insured, as requested, all or part of the proceeds; or

10 (2) provide notice to the insured that explains
11 specifically:

12 (A) the reason for the lender's refusal to
13 release the proceeds to the insured; and

14 (B) each requirement with which the insured must
15 comply for the lender to release the proceeds. (V.T.I.C. Art.
16 21.48B, Sec. 2(b).)

17 Source Law

18 (b) Not later than the 10th day after the date
19 the insured's request for payment of all or part of the
20 insurance proceeds is received by the lender, the
21 lender shall:

22 (1) pay to the insured, if the lender has
23 received sufficient evidence of compliance with the
24 requirements and conditions for release of the funds
25 as specified in Subsection (a) of this section, all or
26 part of the proceeds held by the lender, as requested;
27 or

28 (2) explain, in specific detail, the
29 reason for the lender's refusal to pay the proceeds to
30 the insured and the requirements the insured must
31 satisfy before the lender releases the insurance
32 proceeds.

33 Revisor's Note

34 (1) Section 2(b), V.T.I.C. Article 21.48B,
35 refers to compliance with "requirements and
36 conditions." Throughout this subchapter, the revised
37 law omits as unnecessary the reference to "conditions"
38 when a reference is made to "requirements and
39 conditions" because, in context, "conditions" is
40 included within the meaning of "requirements."

41 (2) Section 2(b), V.T.I.C. Article 21.48B,

1 requires a lender to provide an explanation in
2 "specific detail." The revised law omits as
3 unnecessary the reference to "detail" because, in
4 context, "detail" is included within the meaning of
5 "specific."

6 Revised Law

7 Sec. 557.004. PAYMENT OF INTEREST; RATE. A lender who
8 fails to provide notice as required by Section 557.002 or 557.003 or
9 to release insurance proceeds as required by Section 557.003 shall
10 pay to the insured interest at the rate of 10 percent a year on the
11 proceeds held by the lender. (V.T.I.C. Art. 21.48B, Sec. 3(a).)

12 Source Law

13 Sec. 3. (a) If the lender fails to give the
14 notice required under Section 2(a) or (b)(2) of this
15 article or fails to make a payment within the time
16 required by Section 2(b)(1) of this article, the
17 lender shall pay to the insured interest on the money
18 held at the rate of 10 percent a year.

19 Revised Law

20 Sec. 557.005. ACCRUAL OF INTEREST. (a) If a lender fails
21 to provide notice as required by Section 557.002 or 557.003,
22 interest begins to accrue on the date the lender received the
23 insurance proceeds.

24 (b) If a lender fails to release insurance proceeds as
25 required by Section 557.003, interest begins to accrue on the date
26 the lender receives sufficient evidence of the insured's compliance
27 with the requirements specified by the lender under Section 557.002
28 or 557.003 for release of the proceeds.

29 (c) Interest stops accruing on the date the lender complies
30 with Section 557.002 or 557.003, as applicable. (V.T.I.C. Art.
31 21.48B, Secs. 3(b), (c).)

32 Source Law

33 (b) If the lender fails to give the notice
34 required under Section 2(a) or (b)(2) of this article,
35 the interest begins to accrue on the date the lender
36 receives the insurance proceeds. If the lender fails
37 to make a payment within the time required by Section
38 2(b)(1) of this article, the interest begins to accrue
39 on the date the lender receives satisfactory evidence
40 of compliance with the requirements and conditions for

1 release of the funds as specified in Section 2(a) or
2 2(b)(1) of this article.

3 (c) Interest terminates on the date the lender
4 complies with Section 2 of this article.

5 Revisor's Note

6 Section 3(b), V.T.I.C. Article 21.48B, provides
7 that if a lender fails to release insurance proceeds to
8 an insured as required by Section 2(b)(1) of that
9 article, interest begins to accrue on the date the
10 lender receives "satisfactory evidence" of the
11 insured's compliance with the requirements specified
12 for release of the funds. Section 2(b)(1), revised as
13 Section 557.003(1), requires a lender to release
14 insurance proceeds to an insured if the lender
15 receives "sufficient evidence" of the insured's
16 compliance with the requirements specified for release
17 of the funds. For consistency, the revised law
18 substitutes "sufficient evidence" for the reference to
19 "satisfactory evidence" in Section 3(b), V.T.I.C.
20 Article 21.48B.

21 Revised Law

22 Sec. 557.006. INTEREST NOT REQUIRED ON INSURANCE PROCEEDS
23 APPLIED TO REDUCE NOTE. A lender is not required to pay interest on
24 insurance proceeds applied, in accordance with the terms and
25 conditions of a deed of trust or other security agreement, to reduce
26 a note. (V.T.I.C. Art. 21.48B, Sec. 3(d).)

27 Source Law

28 (d) A lender is not required to pay interest on
29 money applied, in accordance with the terms and
30 conditions of a deed of trust or other security
31 agreement, to reduce the note.

32 Revisor's Note

33 Section 3(d), V.T.I.C. Article 21.48B, provides
34 that a lender is not required to pay interest on
35 "money" applied to reduce a note. The revised law
36 substitutes "insurance proceeds" for "money" because,
37 in context, it is clear that "money" means "insurance

proceeds" and using "insurance proceeds" is consistent with the terminology used in this chapter.

[Sections 557.007-557.050 reserved for expansion]

SUBCHAPTER B. LIENHOLDER APPROVAL OF INSURANCE CLAIM

PAYMENT RELATING TO PERSONAL PROPERTY

Revised Law

Sec. 557.051. LIENHOLDER APPROVAL OF PAYMENT. If payment of an insurance claim relating to personal property requires the endorsement of a check or draft by a holder of a lien on the property or otherwise requires approval of the lienholder, not later than the 14th business day after the date the lienholder receives a request for the endorsement or other approval, the lienholder shall provide:

(1) the endorsement or approval; or

(2) a written statement of the reason for denial of the endorsement or approval to the person who requested the endorsement or approval. (V.A.C.S. Art. 9031, Sec. 1.)

Source Law

Art. 9031

Sec. 1. If payment of an insurance claim relating to personal property requires the endorsement of a check or draft by a holder of a lien on the property or otherwise requires approval of the lienholder, the lienholder, not later than the 14th business day after the date the lienholder receives a request for the endorsement or other approval, shall:

(1) provide the endorsement or other approval; or

(2) provide the person who requested the endorsement or other approval a written statement of the reason for denial of the endorsement or other approval.

Revised Law

Sec. 557.052. CIVIL PENALTY. (a) A lienholder who violates Section 557.051 is liable for a civil penalty not to exceed \$500 for each violation.

(b) The attorney general may bring an action to collect a civil penalty under this section. (V.A.C.S. Art. 9031, Sec. 2.)

Source Law

Sec. 2. (a) A lienholder who violates Section 1 of this article is liable for a civil penalty not to

exceed \$500 for each violation.
(b) The attorney general may sue to collect a
civil penalty under this section.

CHAPTER 558. REFUND OF UNEARNED PREMIUM

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CHAPTER 558. REFUND OF UNEARNED PREMIUM

Revised Law

Sec. 558.001. DEFINITION. In this chapter, "insurer"
means an insurance company or other entity authorized to engage in
the business of insurance in this state. The term includes:

- (1) a stock life, health, or accident insurance
company;
- (2) a mutual life, health, or accident insurance
company;
- (3) a stock fire or casualty insurance company;
- (4) a mutual fire or casualty insurance company;
- (5) a Mexican casualty insurance company;
- (6) a farm mutual insurance company;
- (7) a county mutual insurance company;
- (8) a Lloyd's plan;
- (9) a reciprocal or insurance exchange;
- (10) a fraternal benefit society;
- (11) a stipulated premium company;
- (12) a nonprofit legal services corporation;
- (13) a statewide mutual assessment company;
- (14) a local mutual aid association;
- (15) a local mutual burial association;
- (16) an association exempt under Section 887.102;
- (17) a nonprofit hospital, medical, or dental service
corporation, including a corporation subject to Chapter 842;
- (18) a risk retention group;

- 1 (19) a purchasing group;
- 2 (20) an eligible surplus lines insurer; and
- 3 (21) a guaranty association operating under Article
- 4 21.28-C or 21.28-D. (V.T.I.C. Art. 21.29, Sec. (a).)

5 Source Law

6 Art. 21.29. (a) In this article, "insurer"

7 means an insurance company or other entity that is

8 authorized to engage in the business of insurance in

9 this state, including:

- 10 (1) a domestic or foreign, stock or
- 11 mutual, life, health, or accident insurance company;
- 12 (2) a domestic or foreign, stock or
- 13 mutual, fire and casualty insurance company;
- 14 (3) a Mexican casualty company;
- 15 (4) a farm mutual insurance company;
- 16 (5) a county mutual insurance company;
- 17 (6) a domestic or foreign Lloyd's plan
- 18 insurer;
- 19 (7) a domestic or foreign reciprocal or
- 20 insurance exchange;
- 21 (8) a domestic or foreign fraternal
- 22 benefit society;
- 23 (9) a stipulated premium insurance
- 24 company;
- 25 (10) a nonprofit legal service
- 26 corporation;
- 27 (11) a statewide mutual assessment
- 28 company;
- 29 (12) a local mutual aid association;
- 30 (13) a local mutual burial association;
- 31 (14) an association exempt under Article
- 32 14.17 of this code;
- 33 (15) a nonprofit hospital, medical, or
- 34 dental service corporation, including a company
- 35 subject to Chapter 20 of this code;
- 36 (16) a risk retention group;
- 37 (17) a purchase group;
- 38 (18) a surplus lines carrier; and
- 39 (19) a guaranty association created and
- 40 operating under Article 21.28-C or 21.28-D of this
- 41 code.

42 Revisor's Note

43 (1) Section (a), V.T.I.C. Article 21.29,

44 provides that "insurer" means an insurance company or

45 other entity that is authorized to engage in the

46 business of insurance in this state, including certain

47 "domestic or foreign" insurers. The revised law omits

48 the references to "domestic or foreign" as

49 unnecessary. Because the revised law applies to all

50 insurers authorized to engage in the business of

51 insurance in this state, it is not necessary to

1 distinguish between domestic and foreign insurers in
2 this section.

3 (2) Section (a)(17), V.T.I.C. Article 21.29,
4 refers to a "purchase group." The revised law
5 substitutes "purchasing group" for "purchase group"
6 because that is the term used in V.T.I.C. Article
7 21.54, which regulates risk retention groups and
8 purchasing groups.

9 (3) Section (a)(18), V.T.I.C. Article 21.29,
10 refers to a "surplus lines carrier." The revised law
11 substitutes "eligible surplus lines insurer" for
12 "surplus lines carrier" because that is the term used
13 in Chapter 981 of this code, which regulates surplus
14 lines insurance.

15 Revised Law

16 Sec. 558.002. APPLICABILITY OF CHAPTER; REFUND OF UNEARNED
17 PREMIUM. (a) This chapter applies to an insurer that issues an
18 insurance policy that requires the insurer to maintain an unearned
19 premium reserve for the portion of the written policy premium
20 applicable to the unexpired or unused part of the policy period for
21 which the premium has been paid.

22 (b) An insurer shall promptly refund the appropriate
23 portion of any unearned premium to the policyholder if the policy:

24 (1) has a remaining unearned premium reserve; and

25 (2) is canceled or terminated by the insured or the
26 insurer before the end of its term.

27 (c) A guaranty association shall promptly refund any
28 unearned premium as described by Section 5(8), Article 21.28-C, or
29 Sections 5(10) and 8(n), Article 21.28-D. (V.T.I.C. Art. 21.29,
30 Secs. (b), (c).)

31 Source Law

32 (b) If an insurer issues a policy of insurance
33 that requires the insurer to maintain an unearned
34 premium reserve for the portion of the written policy
35 premium applicable to the unexpired or unused part of
36 the policy period for which the premium has been paid

1 and the policy is canceled or terminated by the insured
2 or the insurer before the end of the policy term with a
3 remaining unearned premium reserve on the policy, the
4 insurer shall promptly refund to the policyholder the
5 appropriate portion of the unearned premium.

6 (c) A guaranty association shall promptly
7 refund any unearned premium defined in Section 5(8),
8 Article 21.28-C, and Section 5(10), Article 21.28-D.

9 Revisor's Note

10 Section (c), V.T.I.C. Article 21.29, refers to
11 "any unearned premium defined in Section 5(8), Article
12 21.28-C, and Section 5(10), Article 21.28-D." Neither
13 Section 5(8), V.T.I.C. Article 21.28-C, nor Section
14 5(10), V.T.I.C. Article 21.28-D, defines the term
15 "unearned premium." The revised law refers to any
16 unearned premium as described by Section 5(8), Article
17 21.28-C, because the term is described in the
18 definition of "covered claim" provided by that
19 section. The revised law also refers to any unearned
20 premium as described by Sections 5(10) and 8(n),
21 Article 21.28-D, because Section 8(n) is the only
22 provision in that article that refers to unearned
23 premiums and Section 5(10) defines "premiums" for
24 purposes of that article.

25 Revised Law

26 Sec. 558.003. RULES AND GUIDELINES. The commissioner
27 shall:

- 28 (1) adopt rules necessary to implement this chapter;
29 and
30 (2) establish appropriate guidelines to determine the
31 portion of an unearned premium that must be refunded to a
32 policyholder under this chapter. (V.T.I.C. Art. 21.29, Sec. (d).)

33 Source Law

34 (d) The commissioner shall adopt rules
35 necessary to implement this article and provide
36 appropriate guidelines for determining the portion of
37 an unearned premium that must be refunded to a
38 policyholder under this article.

39 Revised Law

40 Sec. 558.004. EFFECT ON INSURANCE PREMIUM FINANCE

COMPANY. This chapter does not affect the obligation of an insurer to pay an unearned premium to an insurance premium finance company in accordance with Section 651.162. (V.T.I.C. Art. 21.29, Sec. (e).)

Source Law

(e) Nothing in this article affects the obligation of an insurer to pay an unearned premium to a premium finance company in accordance with Article 24.17(f) of this code.

[Chapters 559-600 reserved for expansion]

SUBTITLE D. PRIVACY

CHAPTER 601. PRIVACY

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CHAPTER 601. PRIVACY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 601.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company. For the purposes of this subdivision, "control" has the meaning described by Sections 823.005 and 823.151.

1 (2) "Authorization" has the meaning assigned by
2 Section 82.001.

3 (3) "Covered entity" means an individual or entity
4 that receives an authorization from the department. The term
5 includes an individual or entity described by Section 82.002.

6 (4) "Nonaffiliated third party" means an entity that
7 is not an affiliate of, or related to by common ownership or
8 affiliated by corporate control with, the covered entity. The term
9 does not include a joint employee of the entity. (V.T.I.C. Art.
10 28A.01.)

11 Source Law

12 Art. 28A.01. In this chapter:

13 (1) "Affiliate" means any company that
14 controls, is controlled by, or is under common control
15 with another company; and the term "control,"
16 including the terms "controls," "controlled by," and
17 "under common control," has the meaning assigned that
18 term by Section 2(d), Article 21.49-1, of this code.

19 (2) "Authorization" has the meaning
20 assigned by Section 82.001 of this code.

21 (3) "Covered entity" means an individual
22 or entity who receives an authorization from the
23 department. The term includes any individual or
24 entity described by Section 82.002 of this code.

25 (4) "Nonaffiliated third party" means an
26 entity that is not an affiliate of, or related to by
27 common ownership or affiliated by corporate control
28 with, the covered entity. The term does not include a
29 joint employee of the entity.

30 Revised Law

31 Sec. 601.002. COMPLIANCE WITH FEDERAL LAW REQUIRED. (a) A
32 covered entity shall comply with 15 U.S.C. Sections 6802 and 6803,
33 as amended, in the same manner as a financial institution is
34 required to comply under those sections.

35 (b) An entity that is a nonaffiliated third party in
36 relation to a covered entity shall comply with 15 U.S.C. Section
37 6802(c), as amended. (V.T.I.C. Art. 28A.02.)

38 Source Law

39 Art. 28A.02. (a) A covered entity shall comply
40 with 15 U.S.C. Sections 6802 and 6803, as amended, in
41 the same manner as a financial institution under those
42 sections.

43 (b) An entity that is a nonaffiliated third
44 party in relation to a covered entity shall comply with
45 15 U.S.C. Section 6802(c), as amended.

Revised Law

Sec. 601.003. EXEMPTION. Section 601.002(a) does not apply to a covered entity to the extent that the entity is acting solely as an insurance agent, employee, or other authorized representative for another covered entity. (V.T.I.C. Art. 28A.03.)

Source Law

Art. 28A.03. Article 28A.02(a) of this code does not apply to a covered entity to the extent that the entity is acting solely as the insurance agent, employee, or other authorized representative for another covered entity.

Revised Law

Sec. 601.004. TREATMENT OF CERTAIN HEALTH INFORMATION;
STRICTER RULES NOT PRECLUDED. This chapter does not affect the
authority of the department or another state agency to adopt
stricter rules governing the treatment of health information by a
covered entity if another law gives the department or agency that
authority, including a law or rule of this state related to the
privacy of individually identifiable health information under
Subtitle F, Title II, Health Insurance Portability and
Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as
amended. (V.T.I.C. Art. 28A.04.)

Source Law

Art. 28A.04. This chapter does not affect the authority of the department or another state agency to adopt stricter rules governing the treatment of health information by a covered entity, if another law gives the department or agency that authority, including any laws or rules of this state related to the privacy of individually identifiable health information under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended.

[Sections 601.005-601.050 reserved for expansion]

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Revised Law

Sec. 601.051. RULES. (a) The commissioner shall adopt:

(1) rules to implement this chapter; and

(2) any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.),

1 as amended, to make this state eligible to override federal
2 regulations as described by 15 U.S.C. Section 6805(c), as amended.

3 (b) In adopting rules under this chapter, the commissioner
4 shall attempt to keep state privacy requirements consistent with
5 federal regulations adopted under Subtitle A, Title V,
6 Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.), as
7 amended. (V.T.I.C. Art. 28A.51.)

8 Source Law

9 Art. 28A.51. (a) The commissioner shall adopt
10 rules to implement this chapter.

11 (b) The commissioner shall adopt any other rules
12 necessary to carry out 15 U.S.C. Subchapter I, Chapter
13 94 (15 U.S.C. Section 6801 et seq.), as amended, to
14 make this state eligible to override federal
15 regulations, as described by 15 U.S.C. Section
16 6805(c), as amended.

17 (c) In adopting rules under this chapter, the
18 commissioner shall attempt to keep state privacy
19 requirements consistent with federal regulations
20 adopted under 15 U.S.C. Subchapter I, Chapter 94 (15
21 U.S.C. Section 6801 et seq.), as amended.

22 Revised Law

23 Sec. 601.052. IMPLEMENTATION OF CERTAIN STANDARDS. The
24 department shall implement standards as required by 15 U.S.C.
25 Section 6805(b), as amended. (V.T.I.C. Art. 28A.52.)

26 Source Law

27 Art. 28A.52. The department shall implement
28 standards as required by 15 U.S.C. Section 6805(b), as
29 amended.

30 [Sections 601.053-601.100 reserved for expansion]

31 SUBCHAPTER C. ENFORCEMENT

32 Revised Law

33 Sec. 601.101. ENFORCEMENT BY DEPARTMENT. The department
34 shall enforce 15 U.S.C. Sections 6801-6805, as amended, to the
35 extent required by 15 U.S.C. Section 6805, as amended, and this
36 chapter. (V.T.I.C. Art. 28A.101.)

37 Source Law

38 Art. 28A.101. The department shall enforce 15
39 U.S.C. Sections 6801-6805, as amended, to the extent
40 required by 15 U.S.C. Section 6805, as amended, and
41 this chapter.

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25	CHAPTER 602. PRIVACY OF HEALTH INFORMATION		
26	SUBCHAPTER A. GENERAL PROVISIONS		
27	<u>Revised Law</u>		
28	Sec. 602.001.	DEFINITIONS. In this chapter:	
29	(1)	"Covered entity" means a person who holds or is	
30		required to hold a license, registration, certificate of authority,	
31		or other authorization under this code or another insurance law of	
32		this state. The term includes:	
33	(A)	an insurance company, including:	
34	(i)	a county mutual insurance company;	

- (ii) a farm mutual insurance company;
 - (iii) a fraternal benefit society;
 - (iv) a group hospital service corporation;
 - (v) a Lloyd's plan;
 - (vi) a local mutual aid association;
 - (vii) a mutual insurance company;
 - (viii) a reciprocal or interinsurance exchange;
 - (ix) a statewide mutual assessment company;
- and
- (x) a stipulated premium company;
 - (B) a health maintenance organization; and
 - (C) an insurance agent.

(2) "Health information" means information regarding an individual, other than the individual's age or gender, whether provided orally or recorded in any medium or form, that is created by or derived from the individual or a health care provider and that relates to:

- (A) the past, present, or future physical, mental, or behavioral health or condition of the individual;
- (B) the provision of health care to the individual; or
- (C) payment for the provision of health care to the individual.

(3) "Nonpublic personal health information" means health information:

- (A) that identifies an individual who is the subject of the information; or
- (B) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual. (V.T.I.C. Art. 28B.01.)

Source Law

Art. 28B.01. In this chapter:

- (1) "Health information" means any information or data regarding an individual, other

1 than age or gender, whether oral or recorded in any
2 form or medium, that is created by or derived from a
3 health care provider or the individual and that
4 relates to:

5 (A) the past, present, or future
6 physical, mental, or behavioral health or condition of
7 an individual;

8 (B) the provision of health care to
9 an individual; or

10 (C) payment for the provision of
11 health care to an individual.

12 (2) "Licensee" means a person who holds or
13 is required to hold a license, registration,
14 certificate of authority, or other authority under
15 this code or another insurance law of this state. The
16 term includes an insurance company, group hospital
17 service corporation, mutual insurance company, local
18 mutual aid association, statewide mutual assessment
19 company, stipulated premium insurance company, health
20 maintenance organization, reciprocal or
21 interinsurance exchange, Lloyd's plan, fraternal
22 benefit society, county mutual insurer, farm mutual
23 insurer, or insurance agent.

24 (3) "Nonpublic personal health
25 information" means health information:

26 (A) that identifies an individual who
27 is the subject of the information; or

28 (B) with respect to which there is a
29 reasonable basis to believe that the information could
30 be used to identify an individual.

31 Revisor's Note

32 (1) Subdivision (1), V.T.I.C. Article 28B.01,
33 refers to "information or data." The revised law omits
34 "data" because "data" is included in the meaning of
35 "information."

36 (2) Subdivision (2), V.T.I.C. Article 28B.01,
37 defines "licensee" as a person who holds a "license,
38 registration, certificate of authority, or other
39 authority." Since the definition includes persons who
40 hold authorizations other than a license, the revised
41 law substitutes "covered entity" as the defined term.
42 Furthermore, since V.T.I.C. Article 28B.09(b),
43 revised as Section 602.103, refers to a "covered
44 entity," the use of that term throughout this chapter
45 ensures consistency of terminology in this chapter, as
46 well as throughout this code.

47 Revised Law

48 Sec. 602.002. APPLICABILITY OF CHAPTER TO COVERED ENTITY
49 REQUIRED TO COMPLY WITH CERTAIN FEDERAL STANDARDS. This chapter

1 does not apply to a covered entity that is required to comply with
2 the standards governing the privacy of individually identifiable
3 health information adopted by the United States secretary of health
4 and human services under Section 262(a), Health Insurance
5 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d
6 et seq.). (V.T.I.C. Art. 28B.05.)

7 Source Law

8 Art. 28B.05. This subchapter does not apply to a
9 licensee who is required to comply with the standards
10 governing the privacy of individually identifiable
11 health information adopted by the United States
12 Secretary of Health and Human Services under Section
13 262(a), Health Insurance Portability and
14 Accountability Act of 1996 (42 U.S.C. Sections
15 1320d-1320d-8).

16 Revised Law

17 Sec. 602.003. CONSTRUCTION OF CHAPTER. (a) This chapter
18 does not preempt or supersede state law in effect on July 1, 2002,
19 that relates to the privacy of medical records, health information,
20 or insurance information.

21 (b) This chapter may not be construed to modify, limit, or
22 supersede the operation of the federal Fair Credit Reporting Act
23 (15 U.S.C. Section 1681 et seq.).

24 (c) This chapter may not be used as a basis for drawing an
25 inference that information is or is not transaction or experience
26 information under Section 603 of the federal Fair Credit Reporting
27 Act (15 U.S.C. Section 1681a). (V.T.I.C. Art. 28B.06.)

28 Source Law

29 Art. 28B.06. (a) This chapter may not be
30 construed to modify, limit, or supersede the operation
31 of the Fair Credit Reporting Act (15 U.S.C. Section
32 1681 et seq.) and an inference may not be drawn based
33 on this chapter regarding whether information is
34 transaction or experience information under Section
35 603 of that Act (15 U.S.C. Section 1681a).

36 (b) This chapter does not preempt or supersede a
37 state law related to medical record, health, or
38 insurance information privacy that is in effect on
39 July 1, 2002.

40 Revised Law

41 Sec. 602.004. RULES. The commissioner may adopt rules as
42 necessary to implement this chapter. (V.T.I.C. Art. 28B.08.)

Source Law

Art. 28B.08. The commissioner may adopt rules as necessary to implement this chapter.

[Sections 602.005-602.050 reserved for expansion]

SUBCHAPTER B. AUTHORIZED DISCLOSURE OF CERTAIN

HEALTH INFORMATION

Revised Law

Sec. 602.051. AUTHORIZATION FOR DISCLOSURE OF CERTAIN HEALTH INFORMATION. (a) Except as provided by Section 602.053, a covered entity must obtain authorization to disclose nonpublic personal health information before disclosing the information.

(b) A request for authorization to disclose nonpublic personal health information may be in written or electronic form and must:

(1) state the identity of the consumer or customer who is the subject of the information;

(2) describe:

(A) each type of information to be disclosed;

(B) each party to whom the covered entity intends to disclose the information;

(C) the purpose of the disclosure;

(D) how the information will be used; and

(E) the procedure for revoking the authorization;

(3) include the signature of:

(A) the consumer or customer who is the subject of the information; or

(B) the individual who is legally empowered to grant authorization;

(4) state the date the authorization is signed; and

(5) provide notice of:

(A) the period for which the authorization is valid; and

(B) the consumer's or customer's right to revoke the authorization at any time.

1 (c) The period for which the authorization is valid may not
2 exceed 24 months.

3 (d) The right of a consumer or customer to revoke an
4 authorization at any time is subject to the rights of an individual
5 who, before receiving notice of a revocation, acted in reliance on
6 the authorization.

7 (e) The covered entity shall retain the original or a copy
8 of the authorization in the records of the individual who is the
9 subject of the nonpublic personal health information. (V.T.I.C.
10 Art. 28B.02.)

11 Source Law

12 Art. 28B.02. (a) A licensee must obtain an
13 authorization to disclose any nonpublic personal
14 health information before making such a disclosure.

15 (b) The request for authorization required by
16 this article may be in written or electronic form and
17 must:

18 (1) state the identity of the consumer or
19 customer who is the subject of the nonpublic personal
20 health information;

21 (2) describe:

22 (A) the types of nonpublic personal
23 health information to be disclosed;

24 (B) the parties to whom the licensee
25 discloses nonpublic personal health information;

26 (C) the purpose of the disclosure;

27 (D) how the information will be used;
28 and

29 (E) the procedure for revoking the
30 authorization;

31 (3) include the signature and date signed
32 of:

33 (A) the consumer or customer who is
34 the subject of the nonpublic personal health
35 information; or

36 (B) the individual who is legally
37 empowered to grant authority;

38 (4) provide notice:

39 (A) of the length of time for which
40 the authorization is valid; and

41 (B) that the consumer or customer may
42 revoke the authorization at any time; and

43 (5) specify the amount of time that the
44 authorization remains valid, which may not exceed 24
45 months.

46 (c) The right of a consumer or customer to
47 revoke an authorization at any time is subject to the
48 rights of an individual who acted in reliance on the
49 authorization before receiving notice of a revocation.

50 (d) The licensee shall retain the original or a
51 copy of the authorization in the record of the
52 individual who is the subject of the nonpublic
53 personal health information.

1 Revisor's Note

2 V.T.I.C. Article 28B.02(b)(4) provides that a
3 request for authorization to disclose nonpublic
4 personal health information must "provide
5 notice . . . of the length of time for which the
6 authorization is valid." Subsection (b)(5) of that
7 article provides that the request must "specify the
8 amount of time that the authorization remains valid."
9 The separately stated requirements are substantively
10 the same. The revised law substitutes for those
11 requirements a provision that the request "must . . .
12 provide notice of . . . the period for which the
13 authorization is valid."

14 Revised Law

15 Sec. 602.052. DELIVERY OF AUTHORIZATION FORM AND REQUEST
16 FOR AUTHORIZATION. (a) A covered entity may deliver to a consumer
17 or customer a request for authorization and an authorization form
18 only if the request and form are clear and conspicuous.

19 (b) A covered entity is required to include delivery of the
20 authorization form in a notice to a consumer or customer only if the
21 covered entity intends to disclose health information protected
22 under this chapter. (V.T.I.C. Art. 28B.03.)

23 Source Law

24 Art. 28B.03. (a) A request for authorization
25 and an authorization form may be delivered to a
26 consumer or a customer if the request and the
27 authorization form are clear and conspicuous.

28 (b) A licensee must include delivery of the
29 authorization in a notice to the consumer or customer
30 only if the licensee intends to disclose protected
31 health information under this chapter.

32 Revised Law

33 Sec. 602.053. EXCEPTIONS. A covered entity may disclose
34 nonpublic personal health information to the extent that the
35 disclosure is necessary to perform the following insurance or
36 health maintenance organization functions on behalf of the covered
37 entity:

(1) the investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity;

(2) underwriting;

(3) the placement or issuance of an insurance policy or evidence of coverage;

(4) loss control services;

(5) ratemaking or guaranty fund functions;

(6) reinsurance or excess loss insurance;

(7) risk management;

(8) case management;

(9) disease management;

(10) quality assurance;

(11) quality improvement;

(12) performance evaluation;

(13) health care provider credentialing verification;

(14) utilization review;

(15) peer review activities;

(16) actuarial, scientific, medical, or public policy research;

(17) grievance procedures;

(18) the internal administration of compliance, managerial, and information systems;

(19) policyholder or enrollee services;

(20) auditing;

(21) reporting;

(22) database security;

(23) the administration of consumer disputes and inquiries;

(24) external accreditation standards;

(25) the replacement of a group benefit plan or workers' compensation policy or program;

(26) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;

1 (27) any activity that permits disclosure without
2 authorization under the federal Health Insurance Portability and
3 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as
4 amended;

5 (28) disclosure that is required, or that is a lawful
6 or appropriate method to enforce the covered entity's rights or the
7 rights of other persons engaged, in carrying out a transaction or
8 providing a product or service that the consumer requests or
9 authorizes;

10 (29) claims administration, adjustment, and
11 management;

12 (30) any activity that is:

13 (A) otherwise permitted by law;

14 (B) required by a governmental reporting
15 authority; or

16 (C) required to comply with legal process; and

17 (31) any other insurance or health maintenance
18 organization functions the commissioner approves that are:

19 (A) necessary for appropriate performance of
20 insurance or health maintenance organization functions; and

21 (B) fair and reasonable to the interests of
22 consumers. (V.T.I.C. Art. 28B.04.)

23 Source Law

24 Art. 28B.04. A licensee may disclose nonpublic
25 personal health information to the extent that the
26 disclosure is necessary to perform the following
27 insurance functions on behalf of that licensee:

28 (1) the investigation or reporting of
29 actual or potential fraud, misrepresentation, or
30 criminal activity;

31 (2) underwriting;

32 (3) the placement or issuance of an
33 insurance policy;

34 (4) loss control services;

35 (5) ratemaking and guaranty fund
36 functions;

37 (6) reinsurance and excess loss insurance;

38 (7) risk management;

39 (8) case management;

40 (9) disease management;

41 (10) quality assurance;

42 (11) quality improvement;

43 (12) performance evaluation;

44 (13) health care provider credentialing

1 verification;
2 (14) utilization review;
3 (15) peer review activities;
4 (16) actuarial, scientific, medical, or
5 public policy research;
6 (17) grievance procedures;
7 (18) the internal administration of
8 compliance, managerial, and information systems;
9 (19) policyholder services;
10 (20) auditing;
11 (21) reporting;
12 (22) database security;
13 (23) the administration of consumer
14 disputes and inquiries;
15 (24) external accreditation standards;
16 (25) the replacement of a group benefit
17 plan or workers' compensation policy or program;
18 (26) activities in connection with a sale,
19 merger, transfer, or exchange of all or part of a
20 business or operating unit;
21 (27) any activity that permits disclosure
22 without authorization under the federal Health
23 Insurance Portability and Accountability Act of 1996
24 (42 U.S.C. Section 1320d et seq.), as amended;
25 (28) disclosure that is required, or is a
26 lawful or appropriate method to enforce the licensee's
27 rights or the rights of other persons engaged, in
28 carrying out a transaction or providing a product or
29 service that the consumer requests or authorizes;
30 (29) claims administration, adjustment,
31 and management;
32 (30) any activity otherwise permitted by
33 law, required pursuant to a governmental reporting
34 authority, or required to comply with legal process;
35 and
36 (31) any other insurance functions that
37 the commissioner approves that are:
38 (A) necessary for appropriate
39 performance of insurance functions; and
40 (B) fair and reasonable to the
41 interests of consumers.

42 Revisor's Note

43 V.T.I.C. Article 28B.04 refers to certain
44 "insurance functions" of a "licensee." The revised
45 law substitutes "insurance or health maintenance
46 organization functions" for "insurance functions"
47 because "licensee," as defined by V.T.I.C. Article
48 28B.01 and revised as "covered entity" in Section
49 602.001, includes a health maintenance organization,
50 which is not a traditional insurer. Similarly, the
51 revised law adds other terminology throughout this
52 section to reflect its application to both traditional
53 insurers and health maintenance organizations. For
54 example, see "evidence of coverage" in Section

602.053(3) and "enrollee" in Section 602.053(19).

[Sections 602.054-602.100 reserved for expansion]

SUBCHAPTER C. PENALTIES AND ENFORCEMENT

Revised Law

Sec. 602.101. PROHIBITION. A covered entity may not knowingly or wilfully violate this chapter. (V.T.I.C. Art. 28B.07.)

Source Law

Art. 28B.07. A licensee may not knowingly or wilfully violate this chapter.

Revised Law

Sec. 602.102. INJUNCTION. The attorney general may bring an action for injunctive relief to restrain a violation of this chapter. (V.T.I.C. Art. 28B.09, Sec. (a).)

Source Law

Art. 28B.09. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

Revised Law

Sec. 602.103. CIVIL PENALTY. (a) The attorney general may bring an action for a civil penalty against a covered entity or health care entity for a violation of this chapter.

(b) A civil penalty assessed under this section may not be less than \$3,000 for each violation.

(c) If the court in which an action under this section is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

(d) A civil penalty authorized by this section is in addition to any other civil, administrative, or criminal action provided by law, including an action for injunctive relief provided by Section 602.102. (V.T.I.C. Art. 28B.09, Secs. (b), (c), (d).)

Source Law

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity or health care entity for a violation of

1 this chapter. A civil penalty assessed under this
2 section may not be less than \$3,000 for each violation.

3 (c) If the court in which an action under
4 Subsection (b) is pending finds that the violations
5 have occurred with a frequency as to constitute a
6 pattern or practice, the court may assess a civil
7 penalty not to exceed \$250,000.

8 (d) The civil penalty authorized by this article
9 is in addition to any other civil, administrative, or
10 criminal action provided by law.

11 Revised Law

12 Sec. 602.104. DISCIPLINARY ACTION. (a) In addition to a
13 penalty prescribed by this subchapter, a covered entity that
14 violates this chapter is subject to investigation, disciplinary
15 proceedings, and probation or suspension of the covered entity's
16 license or other form of authorization to engage in business.

17 (b) If there is evidence that a covered entity has engaged
18 in a pattern or practice of violating this chapter, the covered
19 entity's license or other form of authorization to engage in
20 business may be revoked. (V.T.I.C. Art. 28B.10.)

21 Source Law

22 Art. 28B.10. In addition to the penalties
23 prescribed by this chapter, a violation of this
24 chapter by a licensee is subject to investigation and
25 disciplinary proceedings, including probation or
26 suspension. Evidence of a pattern or practice of
27 violations under this chapter may subject the licensee
28 to license revocation.

29 Revised Law

30 Sec. 602.105. EXCLUSION FROM STATE PROGRAMS. If there is
31 evidence that a covered entity has engaged in a pattern or practice
32 of violating this chapter, in addition to the other penalties
33 prescribed by this subchapter, the covered entity shall be excluded
34 from participating in any state-funded health care program.
35 (V.T.I.C. Art. 28B.11.)

36 Source Law

37 Art. 28B.11. In addition to the penalties
38 prescribed by this chapter, a licensee shall be
39 excluded from participating in any state-funded health
40 care program if there is evidence that the licensee
41 engaged in a pattern or practice of violating this
42 chapter.

43 Revised Law

44 Sec. 602.106. REMEDIES AVAILABLE. This subchapter does

not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that violates this chapter. (V.T.I.C. Art. 28B.12.)

Source Law

Art. 28B.12. This chapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this chapter.

[Chapters 603-650 reserved for expansion]

SUBTITLE E. PREMIUM FINANCING

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1 CHAPTER 651. FINANCING OF INSURANCE PREMIUMS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Revised Law

4 Sec. 651.001. DEFINITIONS. In this chapter:

5 (1) "Annual percentage rate" means the annual
6 percentage rate of finance charge determined under the Consumer
7 Credit Protection Act and Regulation Z.

8 (2) "Consumer Credit Protection Act" means the
9 Consumer Credit Protection Act of 1970 (15 U.S.C. Section 1601 et
10 seq.; 18 U.S.C. Section 891 et seq.).

11 (3) "Insurance premium finance company" means:

12 (A) a person engaged in the business of making
13 loans under this chapter by entering into premium finance
14 agreements with insureds or prospective insureds;

15 (B) a person engaged in the business of acquiring
16 premium finance agreements from insurance agents or brokers or from
17 other insurance premium finance companies; or

18 (C) an insurance agent or broker making loans
19 under this chapter who holds premium finance agreements made and
20 delivered by insureds that are payable to the agent or broker or to
21 the agent's or broker's order.

22 (4) "Insured" means a person who enters into a premium
23 finance agreement with an insurance premium finance company.

24 (5) "Insurer" means an entity organized or authorized
25 to engage in the business of insurance under this code as a capital
26 stock insurance company, title insurance company, reciprocal or
27 interinsurance exchange, Lloyd's plan, fraternal benefit society,
28 mutual or mutual assessment company of any kind, statewide mutual
29 assessment company, local mutual aid association, burial
30 association, county or farm mutual insurance company, fidelity,
31 guaranty, or surety company, or trust company.

32 (6) "License holder" means an insurance premium
33 finance company that holds a license issued under Subchapter B.

34 (7) "Person" means an individual, partnership,

1 corporation, joint venture, trust, association, or other legal
2 entity, regardless of organization.

3 (8) "Premium finance agreement" means an agreement by
4 which an insured or prospective insured promises to pay to an
5 insurance premium finance company the amount advanced or to be
6 advanced under the agreement to an insurer or to an insurance agent
7 in payment of the premiums on an insurance contract.

8 (9) "Regulation Z" means the federal regulations
9 adopted under the Consumer Credit Protection Act as 12 C.F.R.
10 Section 226.1 et seq. (V.T.I.C. Art. 24.01, Subdivs. (1) (part),
11 (2), (4), (5), (6), (7), (8); New.)

12 Source Law

13 Art. 24.01. In this chapter:

14 (1) "Insurance premium finance company"
15 means:

16 (A) a person engaged in the business
17 of making loans under this chapter by entering into
18 premium finance agreements with insureds or
19 prospective insureds, . . . ;

20 (B) a person engaged in the business
21 of acquiring premium finance agreements from insurance
22 agents or brokers or other premium finance companies;
23 or

24 (C) an insurance agent or broker
25 making loans under this chapter who holds premium
26 finance agreements made and delivered by insureds
27 payable to him or her or his or her order.

28 (2) "Premium finance agreement" means an
29 agreement by which an insured or prospective insured
30 promises to pay to a premium finance company the amount
31 advanced or to be advanced under the agreement to an
32 insurer or to an insurance agent in payment of premium
33 on an insurance contract.

34 (4) "Licensee" means an insurance premium
35 finance company holding a license issued by the board
36 under this chapter.

37 (5) "Annual percentage rate" means the
38 annual percentage rate of finance charge as determined
39 in accordance with the Consumer Credit Protection Act
40 of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A.
41 Section 891 et seq.) and Regulation Z (12 C.F.R. 226.1
42 et seq.) promulgated under that Act.

43 (6) "Insured" means a person who enters
44 into a premium finance agreement with an insurance
45 premium finance company.

46 (7) "Person" means an individual,
47 partnership, corporation, joint venture, trust,
48 association, or any other legal entity, however
49 organized.

50 (8) "Insurer" as used in this chapter is
51 any capital stock company, title insurance company,
52 reciprocal or interinsurance exchange, Lloyd's
53 association, fraternal benefit society, mutual and
54 mutual assessment company of any kind or type,

1 statewide assessment association, local mutual aid,
2 burial association, county and farm mutual
3 association, fidelity, guaranty, and surety company,
4 or trust company. Said insurer shall be organized or
5 authorized to do business under the provisions of this
6 code.

7 Revisor's Note

8 (1) Subdivision (3), V.T.I.C. Article 24.01,
9 defines "board" to mean the State Board of Insurance.
10 The revised law omits the definition as unnecessary.
11 Chapter 685, Acts of the 73rd Legislature, Regular
12 Session, 1993, abolished the board and transferred its
13 functions to the commissioner of insurance and the
14 Texas Department of Insurance, as appropriate.
15 Section 31.001 of this code defines "commissioner" and
16 "department" for purposes of this code and the other
17 insurance laws of this state to mean the commissioner
18 of insurance and the Texas Department of Insurance.
19 Throughout this chapter, references to the board have
20 been changed to "commissioner" or "department"
21 appropriately. The omitted law reads:

22 (3) "Board" means the State
23 Board of Insurance.

24 (2) The revised law adds the definitions of
25 "Consumer Credit Protection Act" and "Regulation Z" to
26 avoid unnecessary and frequent repetition of the
27 substance of the definitions. The definitions are
28 derived from Subdivision (5), V.T.I.C. Article 24.01.

29 (3) Subdivision (8), V.T.I.C. Article 24.01,
30 refers to "statewide assessment association" and
31 "local mutual aid." The revised law substitutes
32 "statewide mutual assessment company" and "local
33 mutual aid association" for those terms, respectively,
34 for consistency of terminology in this code.

35 Revised Law

36 Sec. 651.002. CERTAIN CONDUCT NOT ENGAGING IN BUSINESS AS
37 INSURANCE PREMIUM FINANCE COMPANY. (a) The preparation or

1 delivery by an insurance agent of a premium finance agreement or
2 disclosure statement required by Section 651.155 on behalf of the
3 insured does not constitute engaging in business as an insurance
4 premium finance company.

5 (b) Subsection (a) does not apply to a premium finance
6 agreement held for the benefit of the insurance agent as provided by
7 Section 651.001(3)(C). (V.T.I.C. Art. 24.01, Subdiv. (1)(A)
8 (part); Art. 24.04, Sec. (c) (part).)

9 Source Law

10 Art. 24.01. [In this chapter:

11 (1) "Insurance premium finance company"
12 means:

13 (A)] . . . except that the
14 preparation and delivery of a premium finance
15 agreement or disclosure statement required by Section
16 (f), Article 24.11 of this chapter by an insurance
17 agent on behalf of the insured is not doing business as
18 an insurance premium finance company;

19 . . .

20 [Art. 24.04]

21 (c) . . . The preparation and delivery of a
22 premium finance agreement by an insurance agent on
23 behalf of the insured does not constitute doing
24 business as an insurance premium finance company,
25 unless the agreement is held for the benefit of the
26 agent in accordance with Article 24.01(1)(C) of this
27 chapter.

28 Revised Law

29 Sec. 651.003. RULES. (a) The commissioner may adopt and
30 enforce rules necessary to administer this chapter.

31 (b) The rules may contain classifications,
32 differentiations, or other provisions and provide for adjustments
33 or exceptions for any class of transactions necessary to:

34 (1) accomplish the purposes of this chapter;

35 (2) prevent circumvention or evasion of this chapter;

36 or

37 (3) facilitate compliance with this chapter.

38 (c) A rule adopted by the commissioner may not contain any
39 classification, differentiation, or other provision with respect
40 to any class of transactions or provide for any adjustment or
41 exception for any class of transactions that would result in a less
42 stringent disclosure requirement than required for that class of

1 transactions by the Consumer Credit Protection Act or Regulation Z.
2 (V.T.I.C. Art. 24.09.)

3 Source Law

4 Art. 24.09. The board may adopt and enforce
5 rules necessary to carry out this chapter. Those rules
6 may contain the classifications, differentiations, or
7 other provisions and may provide for the adjustments
8 and exceptions for any class of transactions that are
9 necessary to carry out the purposes of this chapter, to
10 prevent circumvention or evasion of this chapter, or
11 to facilitate compliance with this chapter. Those
12 rules may not contain any classification,
13 differentiation, or other provision with respect to or
14 provide for any adjustment or exception for any class
15 of transaction that would result in less stringent
16 disclosure requirements than afforded that class of
17 transaction under the Federal Consumer Credit
18 Protection Act of 1970 (15 U.S.C.A. Section 1601 et
19 seq.; 18 U.S.C.A. Section 891 et seq.) and the
20 applicable portions of Regulation Z (12 C.F.R. 226.1
21 et seq.).

22 Revised Law

23 Sec. 651.004. EMPLOYMENT OF EXAMINERS AND INVESTIGATORS;
24 PAYMENT OF EXPENSES. The department may:

25 (1) employ persons as necessary to examine or
26 investigate and make reports on alleged violations of this chapter
27 and compliance with any other provision of this code by a license
28 holder;

29 (2) pay the salaries and expenses of persons described
30 by Subdivision (1) and of all office employees; and

31 (3) pay an expense necessary to enforce this chapter.
32 (V.T.I.C. Art. 24.06, Sec. (d) (part).)

33 Source Law

34 (d) . . . The board may employ persons as
35 necessary to examine or investigate and make reports
36 on alleged violations of this chapter or on compliance
37 with the other provisions of this code by persons
38 licensed under this chapter and may pay the salaries
39 and expenses of those persons and of all office
40 employees and the expenses necessary to enforce this
41 chapter.

42 Revised Law

43 Sec. 651.005. DEPOSIT AND USE OF FEES. Each fee collected
44 under this chapter:

45 (1) shall be deposited to the credit of the Texas
46 Department of Insurance operating account; and

1 (2) may be used by the department to enforce this
2 chapter. (V.T.I.C. Art. 24.03, Sec. (h) (part); Art. 24.06, Sec.
3 (d) (part).)

4 Source Law

5 [Art. 24.03]

6 (h) Fees collected under this article shall be
7 deposited in the State Treasury to the credit of the
8 State Board of Insurance operating fund. . . .

9 [Art. 24.06]

10 (d) Fees collected under this chapter shall be
11 deposited in the State Treasury to the credit of the
12 State Board of Insurance operating fund. The board may
13 use any portion of those fees to enforce this
14 chapter. . . .

15 Revisor's Note

16 Section (h), V.T.I.C. Article 24.03, and Section
17 (d), V.T.I.C. Article 24.06, require fees to be
18 deposited in the state treasury to the credit of the
19 State Board of Insurance operating fund. Under
20 Chapter 4, Acts of the 72nd Legislature, 1st Called
21 Session, 1991, the Texas Department of Insurance
22 operating fund (the later name of the State Board of
23 Insurance operating fund) was converted to an account
24 in the general revenue fund. The revised law is
25 drafted accordingly.

26 Revised Law

27 Sec. 651.006. ASSESSMENTS. (a) A license holder shall pay
28 to the department:

29 (1) an amount imposed by the department to cover the
30 direct and indirect cost of examinations and investigations made
31 under this chapter; and

32 (2) a proportionate share of the general
33 administrative expense attributable to the regulation of license
34 holders.

35 (b) Each amount required by this section is in addition to
36 any investigation or license fee imposed under Subchapter B.
37 (V.T.I.C. Art. 24.06, Sec. (c).)

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(c) In addition to the investigation and license fees set forth in Article 24.03 of this chapter, each licensee shall pay to the board an amount assessed by the board to cover the direct and indirect cost of examinations and investigations made under this article and a proportionate share of general administrative expense attributable to the regulation of the persons licensed under this chapter.

Sec. 651.007. APPLICABILITY OF CONSUMER CREDIT PROTECTION ACT AND REGULATION Z. A transaction that is subject to this chapter is also subject to:

(1) the Consumer Credit Protection Act; and

(2) the applicable provisions of Regulation Z.

(V.T.I.C. Art. 24.12.)

Art. 24.12. A transaction, although subject to this chapter, is also subject to the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and those applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.) adopted under that Act.

Art. 24.12. A transaction, although subject to this chapter, is also subject to the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and those applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.) adopted under that Act.

Sec. 651.008. AUTHORITY OF GENERAL PROPERTY AND CASUALTY AGENTS TO CHARGE INTEREST TO CERTAIN PERSONS. (a) Notwithstanding any other law, a general property and casualty agent who holds a license under Chapter 4051 may enter into a written agreement with a purchaser of insurance from the agent that provides for the payment of interest to the agent on any amount due to the agent for the insurance purchased. The interest is computed at a rate not to exceed the greater of:

Sec. 651.008. AUTHORITY OF GENERAL PROPERTY AND CASUALTY AGENTS TO CHARGE INTEREST TO CERTAIN PERSONS. (a) Notwithstanding any other law, a general property and casualty agent who holds a license under Chapter 4051 may enter into a written agreement with a purchaser of insurance from the agent that provides for the payment of interest to the agent on any amount due to the agent for the insurance purchased. The interest is computed at a rate not to exceed the greater of:

- (1) a rate allowed by Chapter 303, Finance Code; or
- (2) the rate of one percent a month.

(b) A claim or defense of usury may not be raised in connection with a written agreement under this section. (V.T.I.C. Art. 24.20.)

Art. 24.20. Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or

Art. 24.20. Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or

1 establish a written agreement with any purchaser of
2 insurance from the agent providing for the payment of
3 interest to the agent in an amount not to exceed the
4 greater of a rate allowed by Chapter 303, Finance Code,
5 or the rate of one percent a month, on any amount due
6 and owing to the agent for insurance purchased by the
7 purchaser. In those instances the claim or defense of
8 usury is prohibited.

9 Revisor's Note

10 (1) V.T.I.C. Article 24.20 refers to "Article
11 21.14, Insurance Code, as amended," revised as Chapter
12 4051 of this code. The revised law omits "as amended"
13 because under Section 311.027, Government Code (Code
14 Construction Act), unless expressly provided
15 otherwise, a reference to a statute includes all
16 reenactments, revisions, or amendments of the statute.
17 That provision applies to the revised law.

18 (2) V.T.I.C. Article 24.20 states that a "local
19 recording agent" may "enter into or establish" a
20 certain type of written agreement with a purchaser of
21 insurance. The revised law substitutes "general
22 property and casualty agent" for "local recording
23 agent" because the term "local recording agent" was
24 eliminated by Chapter 703, Acts of the 77th
25 Legislature, Regular Session, 2001, and a person who
26 performs the duties formerly performed by a local
27 recording agent in the context of residential property
28 insurance is now regulated as a "general property and
29 casualty agent" under Chapter 4051 of this code. In
30 addition, the revised law omits the reference to
31 "establish" as redundant. An agent who "enters into"
32 an agreement necessarily "establishes" an agreement.

33 (3) V.T.I.C. Article 24.20 refers to an amount
34 "due and owing" to an agent. The reference to "owing"
35 is omitted from the revised law because it is included
36 within the meaning of "due."

Revisor's Note
(End of Subchapter)

(1) The revised law omits Section (e), V.T.I.C. Article 24.06. That provision requires that certain amounts be deposited in the State Board of Insurance operating fund and reserves all amounts deposited in the fund for use for certain purposes. In 1991, the legislature enacted Section 403.094, Government Code, now repealed, under which many funds were merged into the general revenue fund in 1993 and many funds, accounts, and dedications of revenue were abolished on September 1, 1995. The revised law omits the dedication of this fund because the fund was changed into an account and the dedication of revenue ceased to exist as a result of actions taken under the former Government Code provision. The omitted law reads:

(e) If any residue of those funds remains after the amounts necessary to carry on the work, examinations, and investigations and to employ the persons as authorized by this chapter have been paid, the residue shall be carried over from year to year and used in the enforcement of this chapter. All funds collected under this provision must be deposited in the State Treasury in the State Board of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other expenses incurred by the board under this chapter.

(2) V.T.I.C. Article 24.21 provides for the orderly transfer of the consumer credit commissioner's regulatory authority over insurance premium finance companies to the State Board of Insurance. Because that transfer was required to occur not later than January 1, 1980, the revised law omits Article 24.21 as executed. The omitted law reads:

Art. 24.21. (a) There shall be transferred to the State Board of Insurance from the consumer credit commissioner all records collected under Chapter 12, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-12.01 et seq., Vernon's Texas Civil Statutes), necessary

1 to insure the continuous regulation of
2 insurance premium finance companies by the
3 State Board of Insurance. This transfer
4 shall be made no later than January 1, 1980.

5 (b) The consumer credit commissioner
6 and the State Board of Insurance shall
7 cooperate to ensure an orderly transition
8 period. It is the intent and desire of the
9 legislature that the consumer credit
10 commissioner and the State Board of
11 Insurance consult with the state auditor,
12 the comptroller of public accounts, the
13 Legislative Budget Board, and any other
14 state agency for the orderly transfer of all
15 funds and records as outlined in Subsection
16 (a) of this section from the consumer
17 credit commissioner to the State Board of
18 Insurance.

19 [Sections 651.009-651.050 reserved for expansion]

20 SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

21 Revised Law

22 Sec. 651.051. LICENSE REQUIRED. Unless the person is a
23 license holder, a person may not:

24 (1) negotiate, transact, or engage in the business of
25 insurance premium financing in this state; or

26 (2) contract for, charge, or receive directly or
27 indirectly on or in connection with an insurance premium financing
28 any charge, regardless of whether the charge is for interest,
29 compensation, consideration, expense, or otherwise, if in the
30 aggregate the amount of the charge exceeds the amount the person
31 would be permitted by law to charge if the person were not a license
32 holder. (V.T.I.C. Art. 24.02, Sec. (a) (part).)

33 Source Law

34 Art. 24.02. (a) A person, without first
35 obtaining a license from the board as provided in
36 Section (d), Article 24.03 of this chapter, may not
37 negotiate, transact, or engage in the business of
38 insurance premium financing in this state or contract
39 for, charge, or receive directly or indirectly on or in
40 connection with any insurance premium financing any
41 charges, whether for interest, compensation,
42 consideration, expense, or otherwise, that in the
43 aggregate are greater than the person would be
44 permitted by law to charge if the person were not a
45 licensee under this chapter. . . .

46 Revised Law

47 Sec. 651.052. LICENSE FEE. (a) The department shall
48 establish the fee for a license under this subchapter in an amount

1 not to exceed \$200.

2 (b) The fee for a license issued after June 30 may not exceed
3 \$100.

4 (c) Section 201.001 applies to fees collected under this
5 section. (V.T.I.C. Art. 24.03, Secs. (f) (part), (h) (part).)

6 Source Law

7 (f) The fee for each license may be in an amount
8 not to exceed \$200 as determined by the board
9 and If a license is granted after June 30 of
10 any year, the fee may be in an amount not to exceed \$100
11 as determined by the board for that year.

12 (h) . . . Article 1.31A of this code applies to
13 fees collected under this article.

14 Revised Law

15 Sec. 651.053. ENTITLEMENT OF BANKS AND SAVINGS AND LOAN
16 ASSOCIATIONS TO LICENSE. (a) A bank or a savings and loan
17 association is entitled to receive a license under this subchapter
18 if the bank or savings and loan association:

19 (1) is engaging in business under the laws of this
20 state or the United States; and

21 (2) notifies the department of its intention to
22 operate under this chapter.

23 (b) On receipt of notice under Subsection (a)(2), the
24 department shall immediately issue a license to the bank or savings
25 and loan association. (V.T.I.C. Art. 24.02, Sec. (b).)

26 Source Law

27 (b) Any bank or savings and loan association
28 doing business under the laws of this state or the
29 United States is entitled to receive a license on
30 notification to the board of its intention to operate
31 under this chapter. The board shall immediately issue
32 a license to that bank or savings and loan association.

33 Revised Law

34 Sec. 651.054. APPLICATION FOR LICENSE; INVESTIGATION FEE;
35 EXEMPTION. (a) An application for a license to engage in the
36 business of insurance premium financing must:

37 (1) be in writing on a form prescribed by the
38 commissioner; and

39 (2) be accompanied by a nonrefundable investigation

1 fee in an amount not to exceed \$400 as established by the
2 department.

3 (b) A person who on January 1, 1980, held a license under
4 Chapter 3, Title 79, Revised Statutes (Article 5069-3.01 et seq.,
5 Vernon's Texas Civil Statutes), is not required to pay an
6 investigation fee.

7 (c) Section 201.001 applies to fees collected under this
8 section. (V.T.I.C. Art. 24.03, Secs. (a), (e), (g), (h) (part).)

9 Source Law

10 Art. 24.03. (a) Each application for a license
11 to engage in the business of insurance premium
12 financing must be in writing and in the form prescribed
13 by the board. It must be accompanied by an
14 investigation fee in an amount not to exceed \$400 as
15 determined by the board.

16 (e) The refusal of the board to issue a license
17 does not entitle the applicant to a return of any part
18 of the investigation fee that accompanied the
19 application.

20 (g) Any person holding a license under Chapter
21 342, Finance Code, on the effective date of this
22 chapter is required only to pay the license fee
23 required under this article and is not required to pay
24 the investigation fee required by Section (a) of this
25 article.

26 (h) . . . Article 1.31A of this code applies to
27 fees collected under this article.

28 Revisor's Note

29 (1) Section (e), V.T.I.C. Article 24.03,
30 provides that "[t]he refusal of the board to issue a
31 license does not entitle the applicant to a return of
32 any part of the investigation fee that accompanied the
33 application." The revised law substitutes a reference
34 to a "nonrefundable investigation fee" for the quoted
35 language as more concise and consistent with the
36 terminology used in other provisions of this code.

37 (2) Section (g), V.T.I.C. Article 24.03, refers
38 to a person "holding a license under Chapter 342,
39 Finance Code, on the effective date of this chapter"
40 (V.T.I.C. Chapter 24). V.T.I.C. Chapter 24 was
41 enacted as Chapter 825, Acts of the 66th Legislature,

1 Regular Session, 1979, effective January 1, 1980. At
2 the time of enactment, Section (g) referred to a person
3 holding a license under Chapter 3, Title 79, Revised
4 Civil Statutes of Texas. Chapter 3, Title 79, was
5 subsequently codified as Chapter 342, Finance Code,
6 and the reference in Section (g) was updated to reflect
7 that codification. However, in the context of
8 providing an exemption for a person licensed under
9 that chapter on January 1, 1980, it is more appropriate
10 to refer to the law as it existed on that date.
11 Accordingly, the revised law substitutes a reference
12 to a person "who on January 1, 1980, held a license
13 under Chapter 3, Title 79, Revised Statutes (Article
14 5069-3.01 et seq., Vernon's Texas Civil Statutes)."

15 Revised Law

16 Sec. 651.055. REFUSAL TO ISSUE LICENSE. The department may
17 refuse to issue a license to an applicant if the department
18 determines that:

19 (1) the financial responsibility, experience,
20 character, or general fitness of the applicant or any person
21 associated with the applicant does not command the confidence of
22 the community and does not warrant the belief that the applicant
23 will engage in the business of insurance premium financing
24 honestly, fairly, and efficiently; or

25 (2) the applicant does not have available for the
26 operation of the business net assets of at least \$25,000. (V.T.I.C.
27 Art. 24.03, Sec. (c).)

28 Source Law

29 (c) The board may refuse to issue a license if it
30 finds that:

31 (1) the financial responsibility,
32 experience, character, or general fitness of the
33 applicant or any person associated with the applicant
34 does not command the confidence of the community and
35 does not warrant the belief that the business will be
36 conducted honestly, fairly, and efficiently; or

37 (2) the applicant does not have available
38 for the operation for the business net assets of at
39 least \$25,000.

1 Revised Law

2 Sec. 651.056. NOTICE OF ACTION ON APPLICATION. Not later
3 than the 90th day after the date the department receives an
4 application under Section 651.054, the department shall notify the
5 applicant that:

6 (1) the application has been approved and the
7 department will issue a license to the applicant on payment of the
8 required license fee; or

9 (2) the application has been denied. (V.T.I.C. Art.
10 24.03, Sec. (b).)

11 Source Law

12 (b) Within 90 days after receipt of an
13 application, the board shall notify the applicant
14 that:

15 (1) the application has been approved and
16 a license will be issued on payment of the appropriate
17 license fee; or

18 (2) the application has been denied.

19 Revised Law

20 Sec. 651.057. ISSUANCE OF LICENSE. After approval of an
21 application and on receipt of the required license fee, the
22 department shall:

23 (1) issue a license authorizing the license holder to
24 engage in business as an insurance premium finance company at the
25 location specified in the license holder's application; and

26 (2) send the license to the applicant. (V.T.I.C. Art.
27 24.03, Secs. (d), (f) (part).)

28 Source Law

29 (d) After approval and on receipt of the license
30 fee, the board shall execute the license to engage in
31 the business of a premium finance company at the
32 location specified in the application and shall
33 transmit the license to the applicant.

34 (f) The fee for each license . . . shall be paid
35 to the board. . . .

36 Revisor's Note

37 Section (d), V.T.I.C. Article 24.03, provides
38 that, after approval of an application and on receipt
39 of the required license fee, the board "shall execute

1 the license to engage in the business of a premium
2 finance company." The revised law substitutes "issue"
3 for "execute" because, in this context, the terms are
4 synonymous and "issue" is more commonly used in the
5 licensing provisions of other statutes.

6 Revised Law

7 Sec. 651.058. RECIPROCAL LICENSE. The department may
8 waive any license requirement for an applicant who holds a valid
9 license from another state that has license requirements
10 substantially equivalent to the requirements prescribed by this
11 state. (V.T.I.C. Art. 24.03, Sec. (k).)

12 Source Law

13 (k) The board may waive any license requirement
14 for an applicant with a valid license from another
15 state having license requirements substantially
16 equivalent to those of this state.

17 Revised Law

18 Sec. 651.059. ISSUANCE OF MULTIPLE LICENSES. The
19 department may issue a person more than one license under this
20 subchapter but may not issue one person more than 60 of those
21 licenses. (V.T.I.C. Art. 24.02, Sec. (a) (part).)

22 Source Law

23 (a) . . . The board may issue more than one
24 license but not more than 60 licenses to any one person
25 on compliance with this chapter for each license.

26 Revised Law

27 Sec. 651.060. SINGLE BUSINESS LOCATION AUTHORIZED BY
28 LICENSE. A license authorizes the license holder to maintain only
29 one location where the business of insurance premium financing may
30 be conducted. (V.T.I.C. Art. 24.02, Sec. (a) (part).)

31 Source Law

32 (a) . . . A license issued under this chapter
33 allows the holder to maintain only one office from
34 which business may be conducted. . . .

35 Revised Law

36 Sec. 651.061. APPEARANCE OF LICENSE; POSTING. (a) A
37 license must state the name and address of the license holder.

1 (b) The license must be conspicuously posted at the location
2 where the license holder engages in the business of insurance
3 premium financing. (V.T.I.C. Art. 24.04, Sec. (a) (part).)

4 Source Law

5 Art. 24.04. (a) A license issued under this
6 chapter must state the name and address of the
7 licensee. The license shall be conspicuously posted
8 in the specified office of the licensee. . . .

9 Revised Law

10 Sec. 651.062. TRANSFER OR ASSIGNMENT OF LICENSE
11 PROHIBITED. A license may not be transferred or assigned.
12 (V.T.I.C. Art. 24.04, Sec. (a) (part).)

13 Source Law

14 (a) . . . Except as provided in this chapter,
15 the license is not transferable or assignable. . . .

16 Revisor's Note

17 Section (a), V.T.I.C. Article 24.04, provides
18 that "[e]xcept as provided in this chapter" (Chapter
19 24), a license issued under V.T.I.C. Chapter 24 is not
20 transferable or assignable. The revised law omits the
21 quoted language as unnecessary because Chapter 24 does
22 not otherwise authorize the transfer or assignment of
23 a license.

24 Revised Law

25 Sec. 651.063. TERM OF LICENSE. Unless a staggered renewal
26 system is adopted under Section 651.065, a license is issued for the
27 calendar year and remains valid until December 31 of that year,
28 unless suspended, revoked, or surrendered in accordance with
29 Section 651.204 or 651.206. (V.T.I.C. Art. 24.03, Sec. (f)
30 (part).)

31 Source Law

32 (f) . . . Except as may be provided by a
33 staggered renewal system adopted under Section (j) of
34 this article, each license shall be issued for the
35 calendar year and shall remain in force until December
36 31 of each year, unless suspended, revoked, or
37 surrendered in accordance with Article 24.05 of this
38 chapter. . . .

Revised Law

Sec. 651.064. PROCEDURE FOR LICENSE RENEWAL. (a) A license holder may renew an unexpired license by paying the required renewal fee to the department.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department:

(1) the required renewal fee; and

(2) an additional fee equal to one-half of the original license fee.

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the department:

(1) all unpaid renewal fees; and

(2) an additional fee equal to the original license fee.

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) Not later than the 30th day before the date a person's license expires, the department shall send written notice of the impending license expiration to the person at the person's last known address.

(f) This section may not be construed to prevent the department from denying or refusing to renew a license under an applicable law or a rule adopted by the commissioner. (V.T.I.C. Art. 24.03, Sec. (i).)

Source Law

(i) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the

1 license may not be renewed. A new license may be
2 obtained by complying with the requirements and
3 procedures for obtaining an original license. At
4 least 30 days before the expiration of a license, the
5 commissioner of insurance shall send written notice of
6 the impending license expiration to the licensee at
7 his last known address. This section may not be
8 construed to prevent the board from denying or
9 refusing to renew a license under applicable law or
10 rules of the State Board of Insurance.

11 Revised Law

12 Sec. 651.065. STAGGERED RENEWAL SYSTEM. (a) The
13 commissioner by rule may adopt a system under which licenses expire
14 on various dates during the year.

15 (b) For a year in which the license expiration date is less
16 than one year from the date of license issuance or the anniversary
17 of that date, the license fee shall be prorated so that each license
18 holder pays only that portion of the license fee allocable to the
19 number of months during which the license is valid. On each
20 subsequent renewal of the license, a license holder must pay the
21 total renewal fee. (V.T.I.C. Art. 24.03, Sec. (j).)

22 Source Law

23 (j) The board by rule may adopt a system under
24 which licenses expire on various dates during the
25 year. For the year in which the license expiration
26 date is less than one year from the issuance or
27 anniversary date, the license fee shall be prorated on
28 a monthly basis so that each licensee shall pay only
29 that portion of the license fee that is allocable to
30 the number of months during which the license is valid.
31 On each subsequent renewal of the license, the total
32 license renewal fee is payable.

33 [Sections 651.066-651.100 reserved for expansion]

34 SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM FINANCE

35 COMPANIES

36 Revised Law

37 Sec. 651.101. BOOKS, ACCOUNTS, AND RECORDS. (a) A license
38 holder shall maintain books, accounts, and records in sufficient
39 detail to enable a representative of the department to determine
40 whether the license holder is in compliance with this chapter and
41 rules adopted by the commissioner.

42 (b) A license holder shall maintain for inspection the
43 license holder's books, accounts, and records, including any cards

1 used in a card system, for at least four years after the date the
2 final entry of any premium finance agreement is recorded in those
3 books, accounts, and records. (V.T.I.C. Art. 24.10, Sec. (a).)

4 Source Law

5 Art. 24.10. (a) The licensee shall keep and use
6 books, accounts, and records in enough detail to
7 enable representatives of the board to determine
8 whether the licensee is complying with this chapter
9 and with the rules and regulations lawfully made by the
10 board. The licensee shall preserve and keep available
11 for inspection those books, accounts, and records,
12 including cards used in a card system, if any, for at
13 least four years after the final entry of any premium
14 finance agreement is recorded in those books,
15 accounts, and records.

16 Revisor's Note

17 (1) Section (a), V.T.I.C. Article 24.10,
18 requires a license holder to "keep and use" books,
19 accounts, and records, and to "preserve and keep
20 available" those books, accounts, and records. The
21 revised law substitutes "maintain" for "keep and use"
22 and for "preserve and keep available" because, in this
23 context, "maintain" is synonymous with both phrases
24 and is more concise and more commonly used.

25 (2) Section (a), V.T.I.C. Article 24.10, refers
26 to "rules and regulations lawfully made by the board."
27 The revised law omits the reference to "regulations"
28 because under Section 311.005(5), Government Code
29 (Code Construction Act), applicable to the revised
30 law, a rule is defined to include a regulation. The
31 revised law also omits the reference to "lawfully
32 made" as unnecessary because the commissioner of
33 insurance may adopt rules only in accordance with law,
34 and therefore "lawfully made" does not add to the clear
35 meaning of the law.

36 Revised Law

37 Sec. 651.102. ANNUAL REPORT. On or before April 1 of each
38 year, a license holder shall file with the department a report
39 containing information required by the department concerning the

1 business and operations of the license holder during the preceding
2 calendar year at each licensed location where the license holder
3 engages in the business of insurance premium financing in this
4 state. (V.T.I.C. Art. 24.10, Sec. (b).)

5 Source Law

6 (b) On or before the first day of April of each
7 year each licensee shall file with the board a report
8 giving the information that the board requires
9 concerning the business and operations during the
10 preceding calendar year of each licensed place of
11 business conducted by the licensee in the state.

12 Revised Law

13 Sec. 651.103. BUSINESS NAME. A license holder may not
14 engage in the business of insurance premium financing under any
15 name other than the name stated on the license. (V.T.I.C. Art.
16 24.04, Sec. (c) (part).)

17 Source Law

18 (c) A licensee may not conduct the business of
19 premium financing provided for by this chapter under
20 any name or . . . other than that stated in the
21 license. . . .

22 Revised Law

23 Sec. 651.104. BUSINESS LOCATION. A license holder may not
24 engage in the business of insurance premium financing at any
25 location other than the address stated on the license. (V.T.I.C.
26 Art. 24.04, Sec. (c) (part).)

27 Source Law

28 (c) A licensee may not conduct the business of
29 premium financing provided for by this chapter . . .
30 at any place of business other than that stated in the
31 license. . . .

32 Revised Law

33 Sec. 651.105. RELOCATION OF PLACE OF BUSINESS. (a) A
34 license holder who proposes to relocate the place where the holder
35 engages in the business of insurance premium financing shall give
36 written notice of the proposed change to the department.

37 (b) If the department approves the proposed relocation, the
38 department shall issue an endorsement to the license holder
39 indicating the change and the date of the change.

1 (c) The endorsement authorizes the license holder to engage
2 in the business of insurance premium financing at the new location.
3 The license holder shall attach the endorsement to the license for
4 that location. (V.T.I.C. Art. 24.04, Sec. (a) (part).)

5 Source Law

6 (a) . . . Before a licensee changes an office
7 from one location to another, the licensee shall give
8 written notice of the change to the board which, if it
9 approves the change, shall issue an endorsement
10 indicating the change and the date of the change. The
11 licensee shall attach the endorsement to the license
12 for that office. The endorsement constitutes
13 authority for the operation of the business under the
14 license at the new location.

15 Revised Law

16 Sec. 651.106. BUSINESS PREMISES. (a) Except as provided
17 by Subsection (b), a license holder may engage in the business of
18 insurance premium financing:

19 (1) in any office, suite, room, or place of business in
20 which any other business is solicited or engaged in; or

21 (2) in association or in conjunction with any other
22 business.

23 (b) Subsection (a) does not apply if the department:

24 (1) determines, after a hearing, that the conduct by
25 the license holder of the other business at the location for which
26 the license was issued has concealed evasions of this chapter; and

27 (2) orders the license holder in writing to stop
28 engaging in the business of insurance premium financing at that
29 location. (V.T.I.C. Art. 24.04, Sec. (b).)

30 Source Law

31 (b) A licensee may conduct the business of
32 premium financing under this chapter in any office,
33 suite, room, or place of business in which any other
34 business is solicited or engaged in or in association
35 or conjunction with any other business, unless the
36 board:

37 (1) finds, after a hearing, that the
38 conduct by the licensee of the other business in the
39 particular licensed office has concealed evasions of
40 this chapter; and

41 (2) orders the licensee in writing to stop
42 conducting the business of premium financing in that
43 office.

1 Revised Law

2 Sec. 651.107. ENGAGING IN BUSINESS BY MAIL OR OUTSIDE THE
3 COMMUNITY. This chapter does not prohibit a license holder from
4 engaging in the business of insurance premium financing:

5 (1) by mail; or

6 (2) with persons who do not reside in the same
7 community as the licensed location. (V.T.I.C. Art. 24.04, Sec.
8 (d).)

9 Source Law

10 (d) Nothing in this chapter limits the premium
11 financing of any licensee to residents of the
12 community in which the licensed office is situated or
13 prohibits the licensee from conducting premium
14 financing by mail.

15 Revised Law

16 Sec. 651.108. CERTAIN CHARGES PROHIBITED. In connection
17 with a premium finance agreement entered into under this chapter,
18 an insurance charge or any other charge or fee may not be imposed
19 unless the charge or fee is authorized by this chapter. (V.T.I.C.
20 Art. 24.15 (part).)

21 Source Law

22 Art. 24.15. On insurance premium finance
23 agreements made under this chapter, no insurance
24 charges or any other charge or fee, except those
25 authorized by this chapter, are permitted.

26 Revised Law

27 Sec. 651.109. LIMITATIONS ON RATES AND CHARGES. (a) An
28 insurance premium finance company may not take or receive from an
29 insured a greater rate or charge than is authorized by Chapter 342,
30 Finance Code.

31 (b) For purposes of this section, a charge begins on the
32 earlier of:

33 (1) the date from which the insurer requires payment
34 of the premium and payment was made to the insurer for the financed
35 policy; or

36 (2) the effective date of the policy.

37 (c) The finance charge is computed on the balance of the

1 premiums due after subtracting any down payment made by the insured
2 in accordance with the premium finance agreement. (V.T.I.C. Art.
3 24.15 (part).)

4 Source Law

5 Art. 24.15. A premium finance company may not
6 take or receive from an insured a greater rate or
7 charge than is provided by Chapter 342, Finance Code.
8 Those charges begin on the date from which the
9 insurance company requires payment of the premium and
10 payment was made to the insurance company for the
11 financed policy or on the effective date of the policy,
12 whichever is earlier. The finance charge shall be
13 computed on the balance of the premiums due after
14 subtracting the down payment made by the insured in
15 accordance with the premium finance agreement. . . .

16 Revised Law

17 Sec. 651.110. REBATE OF FINANCE CHARGE. (a) An insurance
18 premium finance company or an employee of an insurance premium
19 finance company may not:

20 (1) pay, allow, or offer to pay or allow in any manner
21 to an insurance agent or broker or an employee of an insurance agent
22 or broker or to any other person any consideration or compensation,
23 from the charge for financing specified in the premium finance
24 agreement or from another source; or

25 (2) give or offer to give any valuable consideration
26 or inducement of any kind directly or indirectly to an insurance
27 agent or broker or an employee of an insurance agent or broker.

28 (b) Subsection (a)(2) does not prohibit the giving or
29 offering of an article of merchandise that has a value of \$1 or less
30 on which there is an advertisement of the insurance premium finance
31 company.

32 (c) Subsection (a) does not prohibit an insurance premium
33 finance company from making a payment under a contractual agreement
34 with a validly organized and operating association of insurance
35 agents or a subsidiary of the association if no part of a payment
36 received under the agreement:

37 (1) is distributed to an insurance agent or broker or
38 an employee of an insurance agent or broker; or

39 (2) inures directly to the benefit of a member of the

1 association or an employee of the member.

2 (d) A contractual agreement under Subsection (c):

3 (1) must be in writing; and

4 (2) is not valid until department approval is
5 received. (V.T.I.C. Art. 24.14, Sec. (a).)

6 Source Law

7 Art. 24.14. (a) A premium finance company or an
8 employee of such a company may not pay or allow or
9 offer to pay or allow in any manner whatsoever to an
10 insurance agent or broker or any employee of an
11 insurance agent or broker or to any other person any
12 consideration or compensation whatsoever, either from
13 the charge for financing specified in the premium
14 finance agreement or otherwise, or give or offer to
15 give any valuable consideration or inducement of any
16 kind directly or indirectly to an insurance agent or
17 broker or any employee of an insurance agent or broker
18 other than an article of merchandise not exceeding \$1
19 in value on which there is an advertisement of the
20 premium finance company, except that nothing in this
21 article prevents payments by a premium finance company
22 under contractual arrangements with a validly
23 organized and operating association of insurance
24 agents or its subsidiary, so long as no part of any
25 funds received under the agreement is distributed to
26 any insurance agent or broker or employee of any
27 insurance agent or broker or inures directly to the
28 benefit of any member of the association or employee of
29 the member. All of those contractual agreements must
30 be in writing and are not valid until approval of the
31 board has been received.

32 Revised Law

33 Sec. 651.111. DECEPTIVE ADVERTISING PROHIBITED. (a) A
34 license holder may not advertise or cause to be advertised in any
35 manner any false, misleading, or deceptive statement or
36 representation with regard to the rates, terms, or conditions of a
37 premium finance agreement.

38 (b) If rates or charges are stated in advertising, the
39 license holder must express the rates or charges in terms of a
40 simple annual percentage rate as defined by federal law. (V.T.I.C.
41 Art. 24.13.)

42 Source Law

43 Art. 24.13. A licensee may not advertise or
44 cause to be advertised in any manner whatsoever any
45 false, misleading, or deceptive statement or
46 representation with regard to the rates, terms, or
47 conditions of any premium finance agreement. If rates
48 or charges are stated in advertising, the licensee
49 shall express them in terms of a simple annual

1 percentage rate as defined by federal law.

2 [Sections 651.112-651.150 reserved for expansion]

3 SUBCHAPTER D. PREMIUM FINANCE AGREEMENTS

4 Revised Law

5 Sec. 651.151. REQUIRED FORM AND CONTENTS OF PREMIUM FINANCE
6 AGREEMENT. (a) A premium finance agreement must be in writing on a
7 form approved by the commissioner.

8 (b) A premium finance agreement must be dated and signed by
9 the insured. An agreement may be signed on behalf of the insured by
10 the insured's agent if:

11 (1) the agreement contains policies for other than
12 personal, family, or household purposes; and

13 (2) the premiums for the policies exceed \$1,000.

14 (c) A premium finance agreement must contain:

15 (1) the name and business address of the insurance
16 agent or broker negotiating the related insurance contract;

17 (2) the name and residence or business address of the
18 insured as specified by the insured;

19 (3) the name and business location of the insurance
20 premium finance company to which payments are to be made;

21 (4) a description of each insurance contract involved;

22 (5) the amount of the premium for each insurance
23 contract;

24 (6) the total amount of the premiums for all insurance
25 contracts;

26 (7) the amount of any down payment;

27 (8) the principal balance, which is the difference
28 between the amounts under Subdivisions (6) and (7);

29 (9) the total amount of the finance charge, which must
30 describe each amount included and use the term "finance charge";
31 and

32 (10) the balance payable by the insured, which is the
33 sum of the amounts under Subdivisions (8) and (9). (V.T.I.C. Art.
34 24.11, Secs. (a), (b), (c).)

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(b) The agreement shall be dated and signed by the insured. If the agreement contains policies for other than personal, family, or household purposes and if the premiums for the policies exceed \$1,000, it may be signed on behalf of the insured by the insured's agent.

(1) the name and business address of the insurance agent or insurance broker negotiating the related insurance contract;

(3) the name and place of business of the premium finance company to which payments are to be made;

(6) the total amount of the premiums for all insurance contracts;

(8) the principal balance (difference between items (6) and (7));

(10) the balance payable by the insured (sum of items (8) and (9)).

Sec. 651.152. OTHER REQUIRED CONTENTS. In addition to the items required by Section 651.151, a premium finance agreement must contain the following, as applicable:

(2) the number of installments required under the agreement;

(4) the due date or period of each installment;

(6) the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

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Source Law

(d) The premium finance agreement in addition must contain the following items as applicable:

(1) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate";

(2) the number of installments required, the amount of each installment expressed in dollars, and the due date or period of each installment;

(3) the amount or method of computing the amount of any default or delinquency charge that is payable in the event of late payment; and

(4) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

Revised Law

Sec. 651.153. FORM OF DISCLOSURES. (a) The disclosures required by Sections 651.151 and 651.152 must be made clearly, conspicuously, and in meaningful sequence.

(b) If the term "finance charge" or "annual percentage rate" is required to be used, the term must be printed more conspicuously than other required terminology.

(c) Each numerical amount or percentage must be expressed as a figure and:

(1) legibly handwritten; or

(2) printed in not less than the equivalent of 10-point type, 75/1,000-inch computer type, or elite-size typewritten numerals. (V.T.I.C. Art. 24.11, Sec. (e).)

Source Law

(e) The disclosures required to be given shall be made clearly, conspicuously, and in meaningful sequence. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this chapter. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10-point type, 75/1,000 inch computer type, or elite size typewritten numerals or shall be legibly handwritten.

Revised Law

Sec. 651.154. CONSOLIDATION OF INCREASE ATTRIBUTABLE TO AMENDMENT OF RATE CLASSIFICATION. (a) If, in a premium finance agreement, a change in an insured's policy that is caused by an amendment of the rate classification by endorsement or otherwise results in an increased principal balance and the amount under the

1 previous contract has not been fully paid, the subsequent increase,
2 at the insured's option, may be consolidated with the previous
3 contract if the agreement provides for consolidation.

4 (b) A consolidation under this section may be accomplished
5 by a memorandum of agreement between the agent and the insured if,
6 before the first scheduled payment date of the amended transaction,
7 the insurance premium finance company provides to the insured the
8 following information in writing:

- 9 (1) the amount of the premium increase;
- 10 (2) the down payment on the increase;
- 11 (3) the principal amount of the increase;
- 12 (4) the total amount of any finance charge on the
13 increase;
- 14 (5) the total of the additional balance due;
- 15 (6) the outstanding balance due under the original
16 agreement;
- 17 (7) the balance due under the consolidated agreement;
- 18 (8) the annual percentage rate of any finance charge
19 on the additional balance due;
- 20 (9) the revised schedule of payments;
- 21 (10) the amount or method of computing the amount of
22 any default, deferment, or similar charge authorized by Chapter
23 342, Finance Code, that is payable in the event of late payment; and
24 (11) the method of computing any unearned portion of
25 the finance charge in the event of prepayment of the obligation.
26 (V.T.I.C. Art. 24.11, Secs. (g), (h).)

27 Source Law

28 (g) If, in a premium finance agreement, changes
29 in an insured's policy due to amending of the rate
30 classification by endorsement or otherwise result in
31 an increased principal balance and the amount under
32 the previous contract has not been fully paid, the
33 subsequent increase may at the insured's option be
34 included in and consolidated with the previous
35 contract, if so provided in the premium finance
36 agreement.

37 (h) Those additions may be accomplished by a
38 memorandum of agreement between the agent and the
39 insured, if before the first scheduled payment date of
40 the amended transaction the premium finance company

gives to the insured the following information in writing:

- (1) the amount of the premium increase;
- (2) the down payment on increase;
- (3) the principal amount of increase;
- (4) the total amount of finance charge on increase;
- (5) the total of additional balance due;
- (6) the outstanding balance of original agreement;
- (7) the consolidated agreement balance;
- (8) the annual percentage rate of finance charge on additional balance due;
- (9) the revised schedule of payments;
- (10) the amount or method of computing the amount of any default, deferment, or similar charges authorized in Chapter 342, Finance Code, payable in the event of late payments; and
- (11) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

Revisor's Note

Section (g), V.T.I.C. Article 24.11, provides that an increase in the principal balance due under a premium finance agreement that is caused by certain changes in the insured's policy may be "included in and consolidated with" the previous policy. The revised law omits "included in" because its meaning is included within the meaning of "consolidated with."

Revised Law

Sec. 651.155. RESPONSIBILITIES OF INSURANCE AGENT. An insurance agent shall:

- (1) prepare a premium finance agreement; and
- (2) deliver to the insured each disclosure statement required by law. (V.T.I.C. Art. 24.11, Sec. (f) (part).)

Source Law

(f) . . . The insurance agent is responsible for the completion of the insurance premium finance agreement and for delivery to the insured any and all disclosure statements that are required by any existing law.

Revised Law

Sec. 651.156. TAKING OF INCOMPLETE PREMIUM FINANCE AGREEMENT PROHIBITED. A license holder may not take a premium finance agreement that has not been fully completed and executed at the time the agreement is executed. (V.T.I.C. Art. 24.11, Sec. (f))

1 (part).)

2 Source Law

3 (f) It shall be a violation of this Act for any
4 licensee to take an insurance premium finance
5 agreement that has not been fully completed and
6 executed at the time the insurance premium finance
7 agreement is executed. . . .

8 Revised Law

9 Sec. 651.157. PERFECTION OF PREMIUM FINANCE AGREEMENT AS
10 SECURED TRANSACTION: FILING NOT REQUIRED. Filing of a premium
11 finance agreement or a financing statement is not necessary to
12 perfect the agreement as a secured transaction against a creditor,
13 subsequent purchaser, pledgee, encumbrancer, successor, or assign
14 of the insured or any other party. (V.T.I.C. Art. 24.14, Sec. (b).)

15 Source Law

16 (b) Filing of a premium finance agreement or a
17 financing statement is not necessary to perfect the
18 validity of such an agreement as a secured transaction
19 against creditors, subsequent purchasers, pledgees,
20 encumbrancers, successors, or assigns of the insured
21 or any other party.

22 Revised Law

23 Sec. 651.158. PREPAYMENT AND REFUND. (a) Notwithstanding
24 the provisions of any premium finance agreement to the contrary, an
25 insured may pay the balance due under the agreement in full at any
26 time before the maturity of the final installment of the balance.

27 (b) If an insured pays a premium finance agreement in full
28 as authorized by this section and the agreement included an amount
29 for a charge, the insured is entitled to receive for the prepayment
30 by cash or renewal a refund credit in accordance with Subchapter H,
31 Chapter 342, Finance Code, and rules adopted under that subchapter.
32 If the amount of the credit for prepayment is less than \$1, the
33 insured is not entitled to a refund credit. (V.T.I.C. Art. 24.16.)

34 Source Law

35 Art. 24.16. Notwithstanding the provisions of
36 any premium finance agreement to the contrary, any
37 insured may pay it in full at any time before the
38 maturity of the final installment of the balance of the
39 agreement, and if the insured does so and the agreement
40 included an amount for a charge, the insured shall
41 receive for the prepayment either by cash or by renewal
42 a refund credit in accordance with the provisions for

1 refunds contained in Subchapter H, Chapter 342,
2 Finance Code, and the regulations issued under that
3 article. Where the amount of the credit for
4 anticipation of payments is less than \$1, no refund
5 need be made.

6 Revisor's Note

7 V.T.I.C. Article 24.16 refers to "regulations"
8 issued under under Subchapter H, Chapter 342, Finance
9 Code. Throughout this chapter, the revised law
10 substitutes "rules" for "regulations" because, in this
11 context, the terms are synonymous and because under
12 Section 311.005(5), Government Code (Code
13 Construction Act), a rule is defined to include a
14 regulation. That definition applies to the revised
15 law.

16 Revised Law

17 Sec. 651.159. DEFAULT CHARGE. A premium finance agreement
18 may provide for the payment of a default charge by the insured as
19 provided by Section 342.203, Finance Code, this code, or a rule
20 adopted under those statutes. (V.T.I.C. Art. 24.17, Sec. (a).)

21 Source Law

22 Art. 24.17. (a) A premium finance agreement may
23 provide for the payment of a default charge by the
24 insured as provided in Section 342.203, Finance Code,
25 the Insurance Code, and the regulations issued under
26 those statutes.

27 Revised Law

28 Sec. 651.160. POWER OF ATTORNEY. A premium finance
29 agreement may contain a power of attorney that enables the
30 insurance premium finance company to cancel any or all of the
31 insurance contracts listed in the agreement as provided by Section
32 651.161. (V.T.I.C. Art. 24.17, Sec. (b) (part).)

33 Source Law

34 (b) A premium finance agreement may contain a
35 power of attorney enabling the premium finance company
36 to cancel any insurance contract or contracts listed
37 in the agreement. . . .

38 Revised Law

39 Sec. 651.161. CANCELLATION OF INSURANCE CONTRACT. (a) An
40 insurance premium finance company may not cancel an insurance

1 contract listed in a premium finance agreement except as provided
2 by this section for an insured's failure to make a payment at the
3 time and in the amount provided in the agreement.

4 (b) The insurance premium finance company must mail to the
5 insured a written notice that the company will cancel the insurance
6 contract because of the insured's default in payment unless the
7 default is cured at or before the time stated in the notice. The
8 stated time may not be earlier than the 10th day after the date the
9 notice is mailed.

10 (c) The insurance premium finance company must also mail a
11 copy of the notice to the insurance agent or broker identified in
12 the premium finance agreement.

13 (d) After the time stated in the notice required by
14 Subsection (b), the insurance premium finance company may cancel
15 each applicable insurance contract by mailing a notice of
16 cancellation to the insurer. Each insurance contract shall be
17 canceled as if the insured had canceled the contract, except that
18 the return of a canceled contract is not required.

19 (e) The insurance premium finance company must also mail a
20 notice of cancellation to:

21 (1) the insured at the insured's last known address;
22 and

23 (2) the insurance agent or broker identified in the
24 premium finance agreement.

25 (f) A statutory, regulatory, or contractual restriction
26 that provides that an insurance contract may not be canceled unless
27 notice is given to a governmental agency, mortgagee, or other third
28 party applies to a cancellation under this section. The insurer
29 shall:

30 (1) give the prescribed notice on behalf of the
31 insurer or the insured to each governmental agency, mortgagee, or
32 other third party on or before the second business day after the
33 date the insurer receives the notice of cancellation from the
34 insurance premium finance company; and

1 (2) determine the effective date of cancellation,
2 taking into consideration the number of days' notice required to
3 complete the cancellation. (V.T.I.C. Art. 24.17, Secs. (b) (part),
4 (c), (d), (e).)

5 Source Law

6 (b) . . . An insurance contract or contracts
7 may not be canceled by the premium finance company
8 unless the cancellation is effectuated in accordance
9 with this section.

10 (c) If the insured fails to make the payments at
11 the time and in the amount provided in the premium
12 finance agreement, the premium finance company shall
13 mail to the insured a written notice of the intent of
14 the premium finance company to cancel the insurance
15 contract because of the default in payments by the
16 insured unless the default in payments is cured within
17 a time certain stated in the notice. That time may not
18 be earlier than the 10th day after the date on which
19 the written notice was mailed. The premium finance
20 company shall also mail a copy of the notice to the
21 insurance agent or insurance broker indicated on the
22 premium finance agreements.

23 (d) After expiration of the period given to cure
24 the default, the premium finance company may cancel
25 the insurance contract or contracts by mailing to the
26 insurer a notice of cancellation. The insurance
27 contract shall be canceled as if the notice of
28 cancellation had been submitted by the insured, but
29 without requiring the return of the insurance contract
30 or contracts. The premium finance company shall also
31 mail a notice of cancellation to the insured at the
32 insured's last known address and to the insurance agent
33 or insurance broker indicated on the premium finance
34 agreement.

35 (e) All statutory, regulatory, and contractual
36 restrictions providing that the insurance contract may
37 not be canceled unless notice is given to a
38 governmental agency, mortgagee, or other third party
39 apply where cancellation is effected under this
40 section. The insurer shall give the prescribed notice
41 on behalf of itself or the insured to any governmental
42 agency, mortgagee, or other third party on or before
43 the second business day after the day on which it
44 receives the notice of cancellation from the premium
45 finance company and shall determine the effective date
46 of cancellation taking into consideration the number
47 of days' notice required to complete the cancellation.

48 Revised Law

49 Sec. 651.162. RETURN OF UNEARNED PREMIUMS AND
50 COMMISSIONS. (a) This section applies only to a premium finance
51 agreement that contains an assignment or power of attorney for the
52 benefit of the insurance premium finance company.

53 (b) If an insurance contract listed in a premium finance
54 agreement is canceled, the insurer shall return all unearned

1 premiums that are due under the contract directly to the insurance
2 premium finance company before the 61st day after the cancellation
3 date.

4 (c) The insurer may deduct from the unearned premiums
5 returned to the insurance premium finance company the amount of any
6 unearned commission due from the agent writing the insurance if the
7 insurer notifies the agent to return the unearned commission to the
8 insurance premium finance company. If the agent does not return the
9 unearned commission to the insurance premium finance company before
10 the 91st day after the cancellation date, the insurer shall remit
11 the unearned commission to the insurance premium finance company
12 before the 121st day after the cancellation date.

13 (d) Notwithstanding Subsections (a)-(c), an agent is liable
14 for the return of unearned commissions on an insurance contract
15 written through the Texas Windstorm Insurance Association, the
16 Texas Automobile Insurance Plan Association, or the Texas Medical
17 Liability Insurance Underwriting Association. An agent placing
18 business through one of those plans shall return the unearned
19 commissions to the insurance premium finance company before the
20 61st day after the date the agent is notified of the cancellation.

21 (e) An insurer, other than the Texas Windstorm Insurance
22 Association, the Texas Automobile Insurance Plan Association, or
23 the Texas Medical Liability Insurance Underwriting Association,
24 may return the unearned premiums to the producing agent. The
25 insurer remains liable and shall remit the unearned premiums to the
26 insurance premium finance company before the 121st day after the
27 cancellation date if:

28 (1) the producing agent does not return the unearned
29 premiums to the insurance premium finance company before the 91st
30 day after the cancellation date; and

31 (2) the insurance premium finance company complied
32 with Section 651.165.

33 (f) If the insurance premium finance company failed to
34 comply with Section 651.165, the insurer, including the Texas

1 Windstorm Insurance Association, the Texas Automobile Insurance
2 Plan Association, and the Texas Medical Liability Insurance
3 Underwriting Association, may comply with its legal duty to return
4 the unearned premiums due under the insurance contract to the
5 insurance premium finance company by returning those unearned
6 premiums to the producing agent.

7 (g) If the crediting of return premiums to the account of an
8 insured results in a surplus over the amount due from the insured,
9 the insurance premium finance company shall refund the excess to
10 the insured. If the amount of the excess is less than \$1, the
11 insured is not entitled to a refund. (V.T.I.C. Art. 24.17, Secs.
12 (f), (g).)

13 Source Law

14 (f) Whenever a financed insurance contract is
15 cancelled, and the premium finance agreement contains
16 an assignment or power of attorney for the benefit of
17 the premium finance company, the insurer shall return
18 whatever unearned premiums are due under the insurance
19 contract directly to the premium finance company
20 within 60 days after the policy cancellation date. The
21 insurer, however, may deduct from the unearned premium
22 returned to the premium finance company the amount of
23 unearned commission due from the agent or agency
24 writing the insurance if the insurer notifies such
25 agent or agency that such unearned commission should
26 be returned to the premium finance company. The
27 insurer shall remit the unearned commission to the
28 premium finance company within 120 days of the policy
29 cancellation date if the agent has not returned the
30 same to the premium finance company within 90 days
31 after the policy cancellation date.

32 Provided, however, agents or agencies shall be
33 liable for the return of unearned commissions on
34 policies written through the Texas Windstorm Insurance
35 Association, the Texas Automobile Insurance Plan, and
36 the Texas Medical Liability Insurance Underwriting
37 Association. Agents or agencies placing business
38 through these plans shall return the unearned
39 commissions to the premium finance company within 60
40 days after the agent or agency has been notified of the
41 cancellation.

42 The insurer, except the Texas Windstorm Insurance
43 Association, the Texas Automobile Insurance Plan, and
44 the Texas Medical Liability Insurance Underwriting
45 Association, may return the unearned premiums to the
46 producing agent or agency; however, the insurer shall
47 remain liable and remit to the premium finance company
48 within 120 days of the policy cancellation date if the
49 producing agent or agency does not return the unearned
50 premiums to the premium finance company within 90 days
51 after the policy cancellation date, provided the
52 premium finance company complied with the provisions
53 of Article 24.22 herein. In the event the premium
54 finance company fails to comply with the provisions in

1 Article 24.22 herein, the insurer, including the Texas
2 Windstorm Insurance Association, the Texas Automobile
3 Insurance Plan, and the Texas Medical Liability
4 Insurance Underwriting Association, may satisfy any
5 legal obligations it has to return the unearned
6 premiums due under the insurance contract to the
7 insurance premium finance company or returning said
8 unearned premiums to the producing agent or agency.

9 (g) In the event that the crediting of return
10 premiums to the account of the insured results in a
11 surplus over the amount due from the insured, the
12 premium finance company shall refund the excess to the
13 insured. No refund is required if it amounts to less
14 than \$1.

15 Revisor's Note

16 Section (f), V.T.I.C. Article 24.17, provides
17 that under certain circumstances an insurer "may
18 satisfy any legal obligations it has to return the
19 unearned premiums due under [a canceled] insurance
20 contract to the insurance premium finance company or
21 returning said unearned premiums to the producing
22 agent or agency." The "or" between "company" and
23 "returning" appears to be a typographical error, and
24 the revised law substitutes "by" for "or." It is clear
25 from the context that the provision authorizes an
26 insurer to satisfy its obligation to return the
27 unearned premiums to the insurance premium finance
28 company by returning the premiums to the producing
29 agent or agency.

30 Revised Law

31 Sec. 651.163. ASSIGNMENT OF PREMIUM FINANCE
32 AGREEMENT. Unless the insured has notice of an actual or intended
33 assignment of a premium finance agreement, payment by an insured
34 under the agreement to the last known holder of the agreement is
35 binding on all subsequent holders or assignees. (V.T.I.C. Art.
36 24.18.)

37 Source Law

38 Art. 24.18. Unless the insured has notice of
39 actual or intended assignment of a premium finance
40 agreement, payment under the agreement by the insured
41 to the last known holder of the agreement is binding on
42 all subsequent holders or assignees.

1 Revised Law

2 Sec. 651.164. RESTRICTIONS ON PREMIUM FINANCE
3 AGREEMENTS. (a) A premium finance agreement may not contain any
4 provision under which, absent default by the insured, the insurance
5 premium finance company holding the agreement may arbitrarily or
6 without reasonable cause accelerate the maturity of all or any part
7 of the amount owing under the agreement.

8 (b) For purposes of Subsection (a), reasonable cause
9 includes a proceeding in bankruptcy, receivership, or insolvency
10 instituted by or against the insured or the insolvency of or
11 suspension of business or cessation of the right to engage in
12 business by an insurer writing policies that are financed for the
13 insured under the premium finance agreement.

14 (c) A license holder may not take:

15 (1) an instrument in which the insured waives any
16 right accruing to the insured under this chapter;

17 (2) an instrument that has not been fully completed
18 and executed by the insured;

19 (3) an assignment of wages as security for an
20 insurance premium finance agreement entered into under this
21 chapter;

22 (4) a lien on real property as security for a premium
23 finance agreement entered into under this chapter, except any lien
24 created by law on the recording of an abstract of judgment; or

25 (5) a confession of judgment or a power of attorney in
26 favor of the license holder or a third person to confess judgment or
27 to appear for an insured in a judicial proceeding. (V.T.I.C. Art.
28 24.19.)

29 Source Law

30 Art. 24.19. (a) A premium finance agreement may
31 not contain any provision by which, in the absence of
32 default of the insured, the premium finance company
33 holding the agreement may arbitrarily and without
34 reasonable cause accelerate the maturity of any part
35 or all of the amount owing thereunder. Reasonable
36 cause without limitation includes a proceeding in
37 bankruptcy, receivership, or insolvency being
38 instituted by or against the insured or the insolvency

1 of or suspension of business or cessation of the right
2 to conduct business by an insurance company writing
3 policies that are financed for the insured under the
4 premium finance agreement.

5 (b) A licensee may not take:

6 (1) any instrument in which the borrower
7 waives any right accruing to the borrower under this
8 chapter;

9 (2) any instrument that has not been fully
10 completed and executed by the insured;

11 (3) an assignment of wages as security for
12 any insurance premium finance agreement made under
13 this chapter;

14 (4) a lien on real estate as security for
15 any insurance premium finance agreement made under
16 this chapter, except such a lien as is created by law
17 on the recording of an abstract of judgment; or

18 (5) any confession of judgment or any
19 power of attorney running to the licensee or to any
20 third person to confess judgment or to appear for a
21 borrower in a judicial proceeding.

22 Revisor's Note

23 (1) Section (a), V.T.I.C. Article 24.19,
24 describes reasonable cause to include "without
25 limitation" several actions. The revised law omits
26 "without limitation" as unnecessary because Section
27 311.005(13), Government Code (Code Construction Act),
28 applicable to the revised law, provides that
29 "includes" and "including" are terms of enlargement
30 and not of limitation and do not create a presumption
31 that components not expressed are excluded.

32 (2) Section (b), V.T.I.C. Article 24.19, refers
33 to a "borrower." The revised law substitutes
34 "insured" for "borrower" because "insured" is the term
35 used in the other provisions of Article 24.19 and it is
36 clear that the article is intended to protect a person
37 who enters into a premium finance agreement with an
38 insurance premium finance company, i.e., an "insured."

39 Revised Law

40 Sec. 651.165. REQUIRED NOTICE OF CERTAIN PREMIUM FINANCE
41 AGREEMENTS. (a) An insurance premium finance company that enters
42 into a premium finance agreement that includes an assignment or
43 power of attorney shall notify the insurer or the Texas Windstorm
44 Insurance Association, the Texas Automobile Insurance Plan

1 Association, or the Texas Medical Liability Insurance Underwriting
2 Association whose premiums are being financed:

3 (1) of the existence of the agreement; and

4 (2) to whom the premium payment has been made.

5 (b) An insurance premium finance company shall notify and
6 fund all premiums to a county mutual insurance company unless the
7 insurance premium finance company is authorized in writing by the
8 county mutual insurance company to notify or fund an agent or
9 managing general agent.

10 (c) Notice required under this section must be made before
11 the 31st day after the date the premium finance agreement is
12 accepted by the insurance premium finance company. (V.T.I.C. Art.
13 24.22.)

14 Source Law

15 Art. 24.22. Any premium finance company which
16 enters into a premium finance agreement which includes
17 an assignment or power of attorney shall notify either
18 the insurer or the Texas Windstorm Insurance
19 Association, the Texas Automobile Insurance Plan, or
20 the Texas Medical Liability Insurance Underwriting
21 Association whose premiums are being financed of the
22 existence of such agreement and to whom the premium
23 payment has been made. Provided, however, the premium
24 finance company shall notify and fund all premiums to
25 county mutual insurance companies unless the premium
26 finance company is authorized in writing by the county
27 mutual to notify or fund an agent or managing general
28 agent. Notification shall be made within 30 days of
29 the date the agreement is accepted by the premium
30 finance company.

31 Revised Law

32 Sec. 651.166. TAKING, RECEIVING, OR CHARGING UNAUTHORIZED
33 AMOUNT. (a) Taking or receiving from an insured or the charging of
34 an insured by an insurance premium finance company of a charge
35 greater than authorized by this chapter does not invalidate:

36 (1) the premium finance agreement; or

37 (2) the principal balance payable under the agreement.

38 (b) An action described by Subsection (a) may be adjudged a
39 forfeiture of all charges that:

40 (1) are authorized under the premium finance
41 agreement; or

1 (2) the insured has agreed to pay.

2 (c) A person who pays an unauthorized charge or the person's
3 legal representative may bring an action against the insurance
4 premium finance company to recover twice the total amount of the
5 charge paid. The action must be brought within two years after the
6 date the unauthorized charge is paid. (V.T.I.C. Art. 24.08, Sec.
7 (b).)

8 Source Law

9 (b) A premium finance company's taking or
10 receiving from or charging an insured a greater charge
11 than authorized by this chapter does not invalidate
12 the premium finance agreement or the principal balance
13 payable under the agreement but may be adjudged a
14 forfeiture of all charges that the premium finance
15 agreement carries with it or that have been agreed to
16 be paid by an insured, the person paying the charge or
17 the person's legal representative may recover from the
18 premium finance agency twice the entire amount of the
19 charges paid if action is brought within two years
20 after the day on which the payment is made.

21 Revised Law

22 Sec. 651.167. EFFECT OF LICENSE REVOCATION, SUSPENSION, OR
23 SURRENDER ON PREMIUM FINANCE AGREEMENT. The revocation,
24 suspension, or surrender of a license does not affect the
25 obligation of an insured under a lawful premium finance agreement
26 previously acquired or held by the person whose license was
27 revoked, suspended, or surrendered. (V.T.I.C. Art. 24.05, Sec.
28 (d).)

29 Source Law

30 (d) A revocation, suspension, or surrender of
31 any license does not affect the obligation of any
32 insured under a lawful premium finance agreement
33 previously acquired or held by the licensee.

34 [Sections 651.168-651.200 reserved for expansion]

35 SUBCHAPTER E. DISCIPLINARY PROCEDURES AND PENALTIES; OFFENSES

36 Revised Law

37 Sec. 651.201. EXAMINATIONS AND INVESTIGATIONS OF LICENSE
38 HOLDERS. (a) The department may conduct an examination or
39 investigation that is necessary to determine whether a license
40 holder:

41 (1) is in compliance with this chapter; or

1 (2) has engaged in conduct that would warrant the
2 revocation or suspension of the license holder's license.

3 (b) The department or an authorized representative of the
4 department may:

- 5 (1) require the attendance of any person;
6 (2) examine the person under oath; and
7 (3) compel the production of any relevant book,
8 record, account, or document. (V.T.I.C. Art. 24.06, Sec. (a).)

9 Source Law

10 Art. 24.06. (a) The board may make examinations
11 or investigations necessary to determine whether a
12 licensee is in compliance with this chapter or whether
13 a licensee has conducted himself or herself so as to
14 justify the revocation of his or her license. The
15 board or its duly authorized representatives may
16 require the attendance of any person, may examine the
17 person under oath, and may compel the production of all
18 relevant books, records, accounts, and documents.

19 Revised Law

20 Sec. 651.202. CONFIDENTIALITY OF REPORTS AND RELATED
21 MATERIAL. (a) A report of an examination or investigation under
22 Section 651.201 and any correspondence or memoranda concerning or
23 arising from the examination or investigation:

- 24 (1) are confidential communications;
25 (2) are not subject to subpoena; and
26 (3) may not be made public, except in connection with a
27 hearing under Section 651.204 or an appearance in connection with
28 the hearing.

29 (b) Subsection (a) applies to an authenticated copy of a
30 report described by Subsection (a) in the possession of the
31 commissioner, the department, or a license holder.

32 (c) Information obtained in the course of an examination or
33 investigation may be made available to another governmental agency
34 if the information involves a matter within the scope or
35 jurisdiction of the agency. (V.T.I.C. Art. 24.06, Sec. (b).)

36 Source Law

37 (b) All reports of examinations or
38 investigations and all correspondence and memoranda
39 concerning or arising out of those examinations or

1 investigations, including any duly authenticated copy
2 or copies of those reports in the possession of any
3 licensee or the board, are confidential
4 communications, are not subject to subpoena, and may
5 not be made public, except in connection with a hearing
6 under Article 24.05 of this chapter and any appearance
7 in connection with such a hearing. Information
8 obtained in the course of these examinations or
9 investigations may be made available to other
10 governmental agencies when the information involves
11 matters within the scope or jurisdiction of those
12 agencies.

13 Revised Law

14 Sec. 651.203. HEARINGS AND INVESTIGATIONS; SUBPOENA
15 POWER. In conducting a hearing or investigation under this
16 chapter, the department or a person designated by the department
17 may:

- 18 (1) administer oaths;
19 (2) subpoena witnesses;
20 (3) take depositions of witnesses who reside outside
21 of this state in the manner provided for in a civil action in
22 district court; and
23 (4) pay to those witnesses a fee and mileage for
24 attendance as provided for a witness in a civil action in district
25 court. (V.T.I.C. Art. 24.07.)

26 Source Law

27 Art. 24.07. In conducting a hearing or
28 investigation under this chapter, the board or any
29 person duly designated by it may:

- 30 (1) subpoena witnesses;
31 (2) take depositions of witnesses residing
32 outside of the state in the manner provided for in
33 civil actions in district courts;
34 (3) pay to those witnesses the fees and
35 mileage for their attendance as provided for witnesses
36 in civil actions in district courts; and
37 (4) administer oaths.

38 Revised Law

39 Sec. 651.204. REVOCATION OR SUSPENSION OF LICENSE. After
40 notice and hearing, the department may revoke or suspend a license
41 if:

- 42 (1) the department finds:
43 (A) that the license holder has violated this
44 chapter or a rule adopted by the commissioner under this chapter; or
45 (B) the existence of a fact or condition that, if

1 the fact or condition existed at the time of the original
2 application for the license, clearly would have warranted the
3 refusal of the license; or

4 (2) the department learns from any source that the
5 license holder has failed to return all amounts due from an
6 insurance premium finance company to the person whose insurance
7 policy has been canceled as required by Section 651.162. (V.T.I.C.
8 Art. 24.05, Secs. (a), (b).)

9 Source Law

10 Art. 24.05. (a) After notice and hearing, the
11 board may revoke or suspend any license issued under
12 this chapter if it finds:

13 (1) that the licensee has violated this
14 chapter or any rule lawfully made by the board under
15 this chapter; or

16 (2) the existence of any fact or condition
17 that, if it had existed at the time of the original
18 application for the license, clearly would have
19 warranted the board to refuse to issue the license.

20 (b) The board, after notice and hearing, may
21 suspend or revoke a license if it learns from the
22 commissioner of insurance or from any other source
23 that the licensee has failed to return all amounts due
24 from the insurance premium finance company to the
25 person whose insurance policy has been canceled as
26 required by Section (g), Article 24.17 of this
27 chapter.

28 Revised Law

29 Sec. 651.205. ISSUANCE OF REVOCATION OR SUSPENSION
30 ORDER. If the department revokes or suspends a license, the
31 department shall:

32 (1) immediately issue in duplicate a written order of
33 revocation or suspension;

34 (2) file one copy of the order in the office of the
35 secretary of state; and

36 (3) mail one copy of the order to the license holder.
37 (V.T.I.C. Art. 24.05, Sec. (e).)

38 Source Law

39 (e) If the board revokes or suspends a license,
40 it shall immediately execute in duplicate a written
41 order to that effect and shall file one copy of that
42 order in the office of the secretary of state and mail
43 one copy to the licensee.

1 Revisor's Note

2 Section (e), V.T.I.C. Article 24.05, provides
3 that, if the board revokes or suspends a license, the
4 board "shall immediately execute . . . a written order
5 to that effect." The revised law substitutes "issue"
6 for "execute" because, in this context, the terms are
7 synonymous and "issue" is more commonly used in
8 licensing disciplinary provisions of other statutes.

9 Revised Law

10 Sec. 651.206. SURRENDER OF LICENSE; EFFECT. (a) A license
11 holder may surrender a license by delivering to the department
12 written notice that the license holder surrenders the license.

13 (b) The surrender of a license does not affect any civil or
14 criminal liability of the person for an act committed before the
15 surrender. (V.T.I.C. Art. 24.05, Sec. (c).)

16 Source Law

17 (c) Any licensee may surrender any license by
18 delivering to the board written notice that the
19 licensee surrenders the license. The surrender of a
20 license does not affect the licensee's civil or
21 criminal liability, if any, for acts committed before
22 the surrender.

23 Revised Law

24 Sec. 651.207. LICENSE REINSTATEMENT. The department may
25 reinstate a suspended license or issue a new license to a person
26 whose license has been revoked if no fact or condition exists that
27 clearly would have warranted the refusal to issue the license
28 originally. (V.T.I.C. Art. 24.05, Sec. (f).)

29 Source Law

30 (f) The board may reinstate a suspended license
31 or issue a new license to a person whose license has
32 been revoked if no fact or condition then exists that
33 clearly would have justified the board in refusing
34 originally to issue the license under this chapter.

35 Revised Law

36 Sec. 651.208. OFFENSE. (a) A person commits an offense if
37 the person:

38 (1) intentionally, knowingly, recklessly, or

1 negligently engages in the operation of an insurance premium
2 finance company and does not hold a license issued under this
3 chapter;

4 (2) intentionally, knowingly, recklessly, or
5 negligently violates this chapter;

6 (3) intentionally or knowingly omits to state a
7 material fact necessary to give the commissioner or the department
8 information lawfully required of the person; or

9 (4) refuses to permit an investigation or examination
10 authorized under this chapter.

11 (b) An offense under this section is a Class B misdemeanor.
12 (V.T.I.C. Art. 24.08, Sec. (a).)

13 Source Law

14 Art. 24.08. (a) (1) A person commits an
15 offense if the person:

16 (A) intentionally, knowingly,
17 recklessly, or negligently engages in the operation of
18 a premium finance company without first obtaining a
19 license;

20 (B) intentionally, knowingly,
21 recklessly, or negligently acts in violation of this
22 chapter;

23 (C) intentionally or knowingly omits
24 to state any material fact necessary to give the board
25 any information lawfully required of the person; or

26 (D) refuses to permit any lawful
27 investigation or examination under this chapter.

28 (2) An offense under this chapter is a
29 Class B misdemeanor.

30 Revised Law

31 Sec. 651.209. SANCTIONS; CEASE AND DESIST ORDERS. In
32 addition to each penalty provided by Sections 651.166 and 651.208,
33 the commissioner or a person designated by the commissioner may:

34 (1) order a sanction under Subchapter B, Chapter 82;
35 or

36 (2) issue a cease and desist order under Chapter 83.
37 (V.T.I.C. Art. 24.08, Sec. (c).)

38 Source Law

39 (c) In addition to the penalties set in
40 Subsections (a) and (b), the board or any person duly
41 designated by it may order sanctions as provided by
42 Section 7, Article 1.10, of this code and issue cease
43 and desist orders as provided by Article 1.10A of this
44 code.

1 [Chapters 652-700 reserved for expansion]

2 SUBTITLE F. INSURANCE FRAUD

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8 [Sections 701.004-701.050 reserved for expansion]

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13 [Sections 701.053-701.100 reserved for expansion]

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26 [Sections 701.110-701.150 reserved for expansion]

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1 CHAPTER 701. INSURANCE FRAUD INVESTIGATIONS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Revised Law

4 Sec. 701.001. DEFINITIONS. In this chapter:

5 (1) "Authorized governmental agency" means:

6 (A) a municipal, county, or state law enforcement
7 agency of this state or another state or a law enforcement agency of
8 the United States; or

9 (B) the prosecuting attorney of a municipality,
10 county, or judicial district of this state or another state or the
11 prosecuting attorney of the United States.

12 (2) "Fraudulent insurance act" means an act that is a
13 violation of a penal law and is:

14 (A) committed or attempted while engaging in the
15 business of insurance;

16 (B) committed or attempted as part of or in
17 support of an insurance transaction; or

18 (C) part of an attempt to defraud an insurer.

19 (3) "Insurer" means a person who is engaged in the
20 business of insurance as a principal or agent. The term includes:

21 (A) an unauthorized insurer; and

22 (B) an entity that is self-insured and provides
23 health care benefits to the entity's employees.

24 (4) "Person" means an individual, corporation,
25 organization, governmental entity, business trust or another
26 trust, estate, partnership, joint venture, association, or any
27 other legal entity. (V.T.I.C. Art. 1.10D, Sec. 1(a).)

28 Source Law

29 Art. 1.10D

30 Sec. 1. (a) In this article:

31 (1) "Authorized governmental agency"
32 means:

33 (A) a duly constituted municipal,
34 county, or state law enforcement agency of this or
35 another state or a federal law enforcement agency; or

36 (B) the prosecuting attorney of any
37 municipality, county, or judicial district of this
38 state, another state, or of the United States.

39 (2) "Fraudulent insurance act" means any

1 act that is a violation of any penal law and that:
2 (A) is committed or attempted to be
3 committed while engaging in the business of insurance
4 or as part of or in support of an insurance
5 transaction; or

6 (B) is part of an attempt to defraud
7 an insurer.

8 (3) "Insurer" means a person engaged in
9 the business of insurance as a principal or agent. The
10 term includes an unauthorized insurer or any entity
11 that is self-insured and provides health care benefits
12 to its employees.

13 (4) "Person" means an individual,
14 corporation, organization, government or governmental
15 subdivision or agency, business trust, estate, trust,
16 partnership, joint venture, association, and any other
17 legal entity.

18 Revisor's Note

19 (1) Section 1(a), V.T.I.C. Article 1.10D,
20 refers to a "duly constituted" law enforcement agency.
21 The revised law omits "duly constituted" as
22 unnecessary because the phrase does not add to the
23 clear meaning of the law. An entity purporting to be a
24 law enforcement agency is not a law enforcement agency
25 if it is not duly constituted.

26 (2) Section 1(a), V.T.I.C. Article 1.10D,
27 defines "person" to include a "government or
28 governmental subdivision or agency." The revised law
29 states the substance of that provision in a more
30 concise way by substituting "governmental entity" for
31 "government or governmental subdivision or agency."

32 Revised Law

33 Sec. 701.002. BUSINESS OF INSURANCE. A person is engaged
34 in the business of insurance for purposes of this chapter if the
35 person performs any act described by Subchapter B, Chapter 101.
36 (V.T.I.C. Art. 1.10D, Sec. 1(b).)

37 Source Law

38 (b) A person is "engaged in the business of
39 insurance" for purposes of this article if the person
40 performs any act defined by Section 2, Article 1.14-1
41 of this code.

42 Revised Law

43 Sec. 701.003. EFFECT OF CHAPTER. This chapter does not:

44 (1) preempt the authority or relieve the duty of an

1 authorized governmental agency to investigate and prosecute
2 suspected criminal acts;

3 (2) prevent or prohibit a person from voluntarily
4 disclosing information to an authorized governmental agency;

5 (3) limit powers or duties granted to the commissioner
6 by any other law; or

7 (4) prohibit or limit the authority of an insurer to
8 conduct an independent investigation of suspected insurance claim
9 fraud. (V.T.I.C. Art. 1.10D, Secs. 2(e) (part); 7.)

10 Source Law

11 [Sec. 2]

12 (e) This section does not prohibit or limit the
13 authority of an insurer to conduct its own independent
14 investigation into a suspected case of insurance claim
15 fraud. . . .

16 Sec. 7. This article does not:

17 (1) preempt the authority or relieve the
18 duty of any authorized governmental agency to
19 investigate and prosecute suspected criminal acts;

20 (2) prevent or prohibit a person from
21 voluntarily disclosing any information to an
22 authorized governmental agency; or

23 (3) limit any powers or duties granted to
24 the commissioner or the board by this code or other
25 laws.

26 Revisor's Note

27 Section 7, V.T.I.C. Article 1.10D, refers to the
28 State Board of Insurance. Chapter 685, Acts of the
29 73rd Legislature, Regular Session, 1993, abolished the
30 board and transferred its functions to the
31 commissioner of insurance and the Texas Department of
32 Insurance. Throughout this chapter, references to the
33 board have been changed appropriately.

34 [Sections 701.004-701.050 reserved for expansion]

35 SUBCHAPTER B. REPORTING FRAUDULENT INSURANCE ACTS

36 Revised Law

37 Sec. 701.051. DUTY TO REPORT. (a) A person who determines
38 a fraudulent insurance act has been or is about to be committed
39 shall report the information in writing to the department or an
40 authorized governmental agency not later than the 30th day after

1 the date the person makes the determination.

2 (b) A report made to one authorized governmental agency or
3 the department constitutes notice to each other authorized
4 governmental agency and the department. (V.T.I.C. Art. 1.10D,
5 Secs. 4(a), (b).)

6 Source Law

7 Sec. 4. (a) If a person determines that a
8 fraudulent insurance act has been committed, or is
9 about to be committed, the person shall report the
10 information to the commissioner or board or to an
11 authorized governmental agency in writing not later
12 than the 30th day after the date of the determination.

13 (b) A report to one authorized governmental
14 agency or the department constitutes notice to all
15 authorized governmental agencies and to the
16 department.

17 Revised Law

18 Sec. 701.052. IMMUNITY FOR FURNISHING INFORMATION RELATING
19 TO A FRAUDULENT INSURANCE ACT. (a) A person is not liable in a
20 civil action, including an action for libel or slander, and a civil
21 action may not be brought against the person, for furnishing
22 information relating to a suspected, anticipated, or completed
23 fraudulent insurance act if the information is provided to:

24 (1) an authorized governmental agency or the
25 department;

26 (2) a law enforcement officer or an agent or employee
27 of the officer;

28 (3) the National Association of Insurance
29 Commissioners or an employee of the association;

30 (4) a state or federal governmental agency established
31 to detect and prevent fraudulent insurance acts or to regulate the
32 business of insurance or an employee of the agency; or

33 (5) a special investigative unit of an insurer,
34 including a person who contracts to provide special investigative
35 unit services to the insurer or an employee of the insurer who is
36 responsible for the investigation of suspected fraudulent
37 insurance acts.

38 (b) A person may furnish information as described in

1 Subsection (a) orally or in writing, including through publishing,
2 disseminating, or filing a bulletin or report.

3 (c) Subsection (a) does not apply to a person who acts with
4 malice, fraudulent intent, or bad faith.

5 (d) A person to whom Subsection (a) applies who prevails in
6 a civil action arising from furnishing information as described in
7 Subsection (a) is entitled to attorney's fees and costs.

8 (e) This section does not affect any common law or statutory
9 privilege or immunity.

10 (f) An insurer shall exercise reasonable care concerning
11 the accuracy of information conveyed to an authorized governmental
12 agency, the insurance fraud unit, or another insurer, person, or
13 entity. (V.T.I.C. Art. 1.10D, Secs. 6(a), (b), (c), (d), (e)
14 (part).)

15 Source Law

16 Sec. 6. (a) A person acting without malice,
17 fraudulent intent, or bad faith is not subject to
18 liability based on filing reports or furnishing,
19 orally or in writing, other information concerning
20 suspected, anticipated, or completed fraudulent
21 insurance acts if the reports or information are
22 provided to:

23 (1) a law enforcement officer or an agent
24 or employee of a law enforcement officer;

25 (2) the National Association of Insurance
26 Commissioners, a state or federal governmental agency
27 established to detect and prevent fraudulent insurance
28 acts or to regulate the business of insurance, or an
29 employee of that association or governmental agency;

30 (3) an authorized governmental agency or
31 the department; or

32 (4) a special investigative unit of an
33 insurer, including a person contracting to provide
34 special investigative unit services, or an employee of
35 an insurer who is responsible for the investigation of
36 suspected fraudulent insurance acts.

37 (b) A person to whom Subsection (a) of this
38 section applies or an employee or agent of such a
39 person when performing an authorized activity,
40 including the publication or dissemination of any
41 related bulletin or reports, and while acting without
42 malice, fraudulent intent, or bad faith, is not
43 subject to civil liability for libel, slander, or any
44 other relevant tort, and a civil cause of action of any
45 nature may not exist against that person based on those
46 activities.

47 (c) This section does not affect or modify any
48 common law or statutory privilege or immunity.

49 (d) A person to whom Subsection (a) of this
50 section applies or an employee or agent of such a
51 person is entitled to an award of attorney's fees and
52 costs if the person, employee, or agent is a prevailing

1 party in a civil cause of action for libel, slander, or
2 any other relevant tort based on activities performed
3 under Subsection (a) of this section.

4 (e) . . . An insurer must exercise reasonable
5 care concerning the accuracy of the information
6 conveyed to the insurance fraud unit, an authorized
7 governmental agency, other insurers, or other persons
8 or entities.

9 Revisor's Note

10 (1) Section 6(b), V.T.I.C. Article 1.10D,
11 refers to a person to whom Section 6(a) of the article
12 applies or "an employee or agent of such a person when
13 performing an authorized activity." Section 6(d),
14 V.T.I.C. Article 1.10D, refers to a person to whom
15 Section 6(a) of the article applies or "an employee or
16 agent of such a person." The revised law omits the
17 quoted phrases as unnecessary because an employee or
18 agent is included as a person to whom Section 6(a),
19 revised as Section 701.052(a), applies.

20 (2) Section 6(b), V.T.I.C. Article 1.10D,
21 refers to a civil cause of action "of any nature." The
22 revised law omits the quoted phrase as unnecessary
23 because the term "civil cause of action" impliedly
24 includes any kind of civil action unless otherwise
25 modified.

26 (3) Section 6(c), V.T.I.C. Article 1.10D,
27 provides that the section does not "affect or modify" a
28 common law or statutory privilege or immunity. The
29 revised law omits the reference to "modify" because
30 "modify" is included in the meaning of "affect."

31 [Sections 701.053-701.100 reserved for expansion]

32 SUBCHAPTER C. INVESTIGATIONS

33 Revised Law

34 Sec. 701.101. INSURANCE FRAUD UNIT. (a) The purpose of
35 the department's insurance fraud unit is to enforce laws relating
36 to fraudulent insurance acts.

37 (b) The insurance fraud unit may receive, review, and
38 investigate in a timely manner insurer antifraud reports submitted

1 under Chapter 704.

2 (c) The insurance fraud unit shall report annually to the
3 commissioner in writing regarding:

4 (1) the number of cases completed by the insurance
5 fraud unit; and

6 (2) recommendations for regulatory and statutory
7 responses to the types of fraudulent activities encountered by the
8 insurance fraud unit. (V.T.I.C. Art. 1.10D, Secs. 2(a); 3A.)

9 Source Law

10 Sec. 2. (a) The insurance fraud unit is created
11 in the Texas Department of Insurance to enforce laws
12 relating to fraudulent insurance acts.

13 Sec. 3A. (a) The insurance fraud unit may
14 receive, review and investigate in a timely manner
15 insurer antifraud reports submitted under Subchapter
16 K, Chapter 3, of this code.

17 (b) The insurance fraud unit shall report
18 annually in writing to the commissioner the number of
19 cases completed and any recommendations for new
20 regulatory and statutory responses to the types of
21 fraudulent activities encountered by the insurance
22 fraud unit.

23 Revisor's Note

24 Section 2(a), V.T.I.C. Article 1.10D, provides
25 that "[t]he insurance fraud unit is created in the
26 Texas Department of Insurance." The revised law omits
27 the reference to creating the insurance fraud unit as
28 executed.

29 Revised Law

30 Sec. 701.102. INVESTIGATION OF CERTAIN ACTS OF FRAUD. If
31 the commissioner has reason to believe a person has engaged in, is
32 engaging in, has committed, or is about to commit a fraudulent
33 insurance act or the offense of insurance fraud under Section
34 35.02(a), Penal Code, the commissioner may conduct any
35 investigation necessary inside or outside this state to:

36 (1) determine whether the act or offense occurred; or

37 (2) aid in enforcing laws relating to fraudulent
38 insurance acts or insurance fraud. (V.T.I.C. Art. 1.10D, Sec.
39 2(b).)

Source Law

(b) If the commissioner has reason to believe that a person has engaged in or is engaging in an act or practice that may constitute either a fraudulent insurance act, as defined by Section 1(a)(2) of this article, or insurance fraud under Section 35.02(a), Penal Code, or has committed, or is about to commit, a fraudulent insurance act or insurance fraud, the commissioner may make any investigation necessary inside or outside this state to determine whether or not the act has occurred, or to aid in the enforcement of the laws relating to fraudulent insurance acts or insurance fraud.

Revisor's Note

Section 2(b), V.T.I.C. Article 1.10D, refers to an "act or practice" that may constitute insurance fraud. The revised law omits the reference to "practice" because "practice" is included in the meaning of "act."

Revised Law

Sec. 701.103. DISCIPLINARY ACTION; REPORT TO OTHER AGENCIES. (a) The commissioner shall take appropriate disciplinary action as provided by this code if the commissioner believes a fraudulent insurance act has occurred. The commissioner shall report information concerning the commissioner's belief that a person has committed a fraudulent insurance act to an authorized governmental agency.

(b) The commissioner shall:

(1) provide all material, documents, reports, complaints, or other evidence to an authorized governmental agency on request; and

(2) assist the authorized governmental agency as requested. (V.T.I.C. Art. 1.10D, Secs. 2(c), (d).)

Source Law

(c) If the commissioner believes that a fraudulent insurance act has occurred, the commissioner shall take appropriate disciplinary action as provided by this code. If the commissioner believes that a person has committed a fraudulent insurance act, the commissioner shall report the information to an authorized governmental agency.

(d) The commissioner shall furnish all materials, documents, reports, complaints, or other evidence to any authorized governmental agency on request and shall assist the authorized governmental

1 agency as requested.

2 Revised Law

3 Sec. 701.104. DEPARTMENT INVESTIGATORS. (a) The
4 commissioner may:

5 (1) employ investigators as necessary to enforce this
6 chapter; and

7 (2) commission those investigators as peace officers.

8 (b) If the commissioner commissions investigators as peace
9 officers, the commissioner shall appoint a chief investigator who:

10 (1) is commissioned as a peace officer; and

11 (2) is qualified by training and experience in law
12 enforcement to supervise, direct, and administer the activities of
13 the commissioned investigators.

14 (c) An investigator employed by the department as a peace
15 officer must meet the requirements for a peace officer under
16 Chapter 1701, Occupations Code. (V.T.I.C. Art. 1.10D, Sec. 2(f).)

17 Source Law

18 (f) The commissioner may employ investigators
19 as the commissioner considers necessary to enforce
20 this article and may commission those investigators as
21 peace officers. An investigator employed by the
22 department as a peace officer must meet the
23 requirements for peace officers imposed under Chapter
24 415, Government Code. If the commissioner elects to
25 commission peace officers, the commissioner shall
26 appoint a chief investigator who is commissioned as a
27 peace officer and who is qualified by training and
28 experience in law enforcement to supervise, direct,
29 and administer the activities of the commissioned
30 investigators.

31 Revisor's Note

32 Section 2(f), V.T.I.C. Article 1.10D, refers to
33 the requirements for a peace officer imposed under
34 Chapter 415, Government Code. That chapter was
35 recodified in 1999 as Chapter 1701, Occupations Code.
36 The revised law is drafted accordingly.

37 Revised Law

38 Sec. 701.105. ASSISTANCE FROM LAW ENFORCEMENT. An
39 investigator employed by the department may request assistance from
40 local law enforcement officers in conducting an investigation

1 authorized by this chapter. (V.T.I.C. Art. 1.10D, Sec. 2(g).)

2 Source Law

3 (g) An investigator employed by the department
4 may request the assistance of local law enforcement
5 officers in conducting an investigation authorized by
6 this article.

7 Revised Law

8 Sec. 701.106. SUBPOENA AUTHORITY. (a) The commissioner
9 may issue a subpoena to compel the attendance and testimony of a
10 witness or, except as provided by Subsection (b), the production of
11 materials relevant to an investigation under this chapter.

12 (b) A person is not required to produce an item subpoenaed
13 under Subsection (a) if the item can only be identified by writing
14 and executing a special computer program for that purpose.

15 (c) A person possessing materials located outside this
16 state that are requested by the commissioner may make the materials
17 available to the commissioner or a representative of the
18 commissioner for examination at the place where the materials are
19 located. The commissioner may designate a representative,
20 including an official of the state in which the materials are
21 located, to examine the materials. The commissioner may respond to
22 a similar request from an official of another state or the United
23 States. (V.T.I.C. Art. 1.10D, Secs. 3(a), (b).)

24 Source Law

25 Sec. 3. (a) The commissioner and at least one
26 member of the board may issue a subpoena and compel the
27 attendance and testimony of witnesses and the
28 production of materials relevant to an inquiry under
29 this article, except that a witness is not required to
30 produce any item that can be identified only through
31 the writing and execution of a special computer
32 program.

33 (b) A person with materials located outside this
34 state that are requested by the commissioner and at
35 least one member of the board may make the materials
36 available to the commissioner and the board member or a
37 representative of the commissioner and the board
38 member for examination at the place where the
39 materials are located. The commissioner and the board
40 member may designate representatives, including
41 officials of the state in which the materials are
42 located, to examine the materials and may respond to
43 similar requests from an official of another state or
44 of the United States.

1 Revisor's Note

2 (1) Section 3(a), V.T.I.C. Article 1.10D,
3 states that certain action may be taken by the
4 "commissioner and at least one member of the board."
5 As explained in the revisor's note to Section 701.003,
6 the State Board of Insurance was abolished in 1993.
7 For that reason, the revised law substitutes a
8 reference to the commissioner only for references to
9 powers granted jointly to the commissioner and a
10 member of the board.

11 (2) Section 3(a), V.T.I.C. Article 1.10D,
12 refers to an "inquiry" under this chapter. Throughout
13 this chapter, the revised law substitutes
14 "investigation" for "inquiry" for consistency of
15 terminology within the chapter.

16 Revised Law

17 Sec. 701.107. CERTAIN AGENCIES' DUTY TO PROVIDE
18 INFORMATION. (a) On the insurance fraud unit's request, an
19 authorized governmental agency or a state licensing agency shall
20 provide material, documents, reports, complaints, or other
21 evidence to the insurance fraud unit.

22 (b) Compliance with Subsection (a) by an authorized
23 governmental agency or a state licensing agency does not constitute
24 waiver of any otherwise applicable privilege or confidentiality
25 requirement. (V.T.I.C. Art.1.10D, Sec. 2(d-1) (part).)

26 Source Law

27 (d-1) An authorized governmental agency and any
28 state licensing agency shall furnish any materials,
29 documents, reports, complaints, or other evidence to
30 the insurance fraud unit on the request of the unit.
31 Compliance with this subsection by an authorized
32 governmental agency or state licensing agency does not
33 constitute waiver of any privilege or requirement of
34 confidentiality otherwise applicable. . . .

35 Revised Law

36 Sec. 701.108. INSURER'S DUTY TO PROVIDE INFORMATION. On
37 the written request of an authorized governmental agency, an

1 insurer shall provide to the agency any relevant information or
2 material relating to a matter under investigation. (V.T.I.C. Art.
3 1.10D, Sec. 4(c).)

4 Source Law

5 (c) On written request to any insurer by an
6 authorized governmental agency, the insurer shall
7 furnish to the authorized governmental agency any
8 relevant information or material relating to the
9 matter under investigation.

10 Revised Law

11 Sec. 701.109. REQUEST FOR INVESTIGATION BY INSURER. An
12 insurer must complete an investigation of suspected insurance claim
13 fraud and draft a report of the insurer's findings before
14 requesting that the commissioner conduct an investigation. The
15 insurer must submit the report and the related investigation file
16 to the commissioner as part of the insurer's request that the
17 commissioner conduct an investigation. (V.T.I.C. Art. 1.10D, Sec.
18 2(e) (part).)

19 Source Law

20 (e) . . . Before an insurer may request the
21 commissioner to conduct an investigation of suspected
22 claim fraud, the insurer must have completed its
23 investigation and drafted a report of its findings.
24 The insurer shall submit the report and the related
25 investigation file to the commissioner as part of the
26 insurer's request for investigation by the
27 commissioner.

28 [Sections 701.110-701.150 reserved for expansion]

29 SUBCHAPTER D. INSURANCE FRAUD INFORMATION; CONFIDENTIALITY

30 Revised Law

31 Sec. 701.151. CONFIDENTIALITY OF DEPARTMENT
32 INFORMATION. (a) Information or material acquired by the
33 department that is relevant to an investigation by the insurance
34 fraud unit is not a public record for the period the commissioner
35 considers reasonably necessary to:

- 36 (1) complete the investigation;
37 (2) protect the person under investigation from
38 unwarranted injury; or
39 (3) serve the public interest.

1 (b) The information or material is not subject to a subpoena
2 by another governmental entity, other than a grand jury subpoena,
3 until:

4 (1) the information or material is released for public
5 inspection by the commissioner; or

6 (2) after notice and a hearing a district court
7 determines that obeying the subpoena would not jeopardize the
8 public interest and any investigation by the commissioner.

9 (c) This section does not affect the conduct of a contested
10 case under Chapter 2001, Government Code. (V.T.I.C. Art. 1.10D,
11 Sec. 5(a).)

12 Source Law

13 Sec. 5. (a) Any information or material
14 acquired by the department that is relevant to an
15 inquiry by the insurance fraud unit is not a public
16 record for as long as the commissioner considers
17 reasonably necessary to complete the investigation,
18 protect the person under investigation from
19 unwarranted injury, or serve the public interest. The
20 information or material is not subject to a subpoena by
21 another governmental entity, except a valid grand jury
22 subpoena, until released for public inspection by the
23 commissioner or, after notice and a hearing, a
24 district court determines that the public interest and
25 any investigation by the commissioner would not be
26 jeopardized by obeying the subpoena. This subsection
27 does not affect the conduct of contested cases under
28 the Administrative Procedure and Texas Register Act
29 (Article 6252-13a, Vernon's Texas Civil Statutes).

30 Revisor's Note

31 (1) Section 5(a), V.T.I.C. Article 1.10D,
32 refers to a "valid" grand jury subpoena. The revised
33 law omits the reference to "valid" because, in
34 context, it does not add to clear meaning. An invalid
35 subpoena is not a subpoena.

36 (2) Section 5(a), V.T.I.C. Article 1.10D,
37 refers to the Administrative Procedure and Texas
38 Register Act (Article 6252-13a, Vernon's Texas Civil
39 Statutes). The relevant parts of the Administrative
40 Procedure Act were codified in 1993 as Chapter 2001,
41 Government Code. The revised law is drafted
42 accordingly.

1 Revised Law

2 Sec. 701.152. CONFIDENTIALITY OF AUTHORIZED GOVERNMENTAL
3 AGENCY INFORMATION. Information or material acquired under this
4 chapter by an authorized governmental agency is privileged and is
5 not a public record. The information or material is not subject to
6 a subpoena, other than a grand jury subpoena, unless, after
7 reasonable notice to the insurer and agency and a hearing, a
8 district court determines that obeying the subpoena would not
9 jeopardize the public interest and any investigation by the agency.
10 (V.T.I.C. Art. 1.10D, Sec. 5(b) (part).)

11 Source Law

12 (b) Any information or material acquired under
13 this article by an authorized governmental agency is
14 privileged and is not a part of any public
15 record. . . . The information or material is not
16 subject to a subpoena, except a valid grand jury
17 subpoena, unless, after reasonable notice to the
18 insurer and authorized governmental agency and after a
19 hearing, a district court determines that the public
20 interest and any investigation by the authorized
21 governmental agency will not be jeopardized by obeying
22 the subpoena.

23 Revisor's Note

24 Section 5(b), V.T.I.C. Article 1.10D, refers to a
25 "valid" grand jury subpoena. The revised law omits the
26 reference to "valid" for the reason stated in Revisor's
27 Note (1) to Section 701.151.

28 Revised Law

29 Sec. 701.153. DISCLOSURE OF INFORMATION TO CERTAIN
30 AGENCIES. An authorized governmental agency may release to
31 another authorized governmental agency or the department and the
32 department may release to an authorized governmental agency
33 information or material provided under this chapter. (V.T.I.C.
34 Art. 1.10D, Sec. 5(c).)

35 Source Law

36 (c) An authorized governmental agency or the
37 department provided with information or material may
38 release it to any other authorized governmental agency
39 or the department.

Revised Law

Sec. 701.154. DISCLOSURE OF INFORMATION TO PUBLIC. (a)
Except as otherwise provided by law, an authorized governmental
agency or an insurer that possesses or receives information or
material under this chapter may not release that information or
material to the public.

(b) Information provided under this chapter by an insurer to the insurance fraud unit or an authorized governmental agency is not subject to public disclosure. The information may be used by the insurance fraud unit or authorized governmental agency only in performing duties described by this chapter.

(c) Notwithstanding Section 701.151, the commissioner may not release evidence obtained under Section 701.107 for public inspection if releasing the evidence would violate a privilege held by or a confidentiality requirement imposed on the agency from which the evidence was obtained. (V.T.I.C. Art. 1.10D, Secs. 2(d-1) (part); 5(b) (part); 6(e) (part).)

Source Law

[Sec. 2]

(d-1) . . . Notwithstanding Section 5(a) of this article, the commissioner may not release evidence obtained under this subsection for public inspection if release of the evidence would violate a privilege held by or a requirement of confidentiality imposed on the agency from which the evidence was obtained.

[Sec. 5]

(b) . . . Except as otherwise provided by law, an authorized governmental agency or an insurer that possesses or receives any information or material under this article may not release it to the public. . . .

[Sec. 6]

(e) Information provided herein by an insurer to the insurance fraud unit and/or an authorized governmental agency shall not be subject to public disclosure. The information may be used by the insurance fraud unit and/or governmental agency only for the performance of its duties as described herein. . . .

CHAPTER 702. MOTOR VEHICLE THEFT AND MOTOR VEHICLE

INSURANCE FRAUD REPORTING

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8 CHAPTER 702. MOTOR VEHICLE THEFT AND MOTOR VEHICLE

9 INSURANCE FRAUD REPORTING

10 Revised Law

11 Sec. 702.001. DEFINITIONS. In this chapter:

12 (1) "Authorized governmental agency" means:

13 (A) the Department of Public Safety;

14 (B) a police department of a municipality;

15 (C) a sheriff's department;

16 (D) a criminal investigative department or

17 agency of the United States; or

18 (E) the prosecuting attorney of:

19 (i) a municipality, judicial district, or

20 county of this state;

21 (ii) the United States; or

22 (iii) a judicial district of the United

23 States.

24 (2) "Insurer" means an insurer that is:

25 (A) authorized to write motor vehicle insurance

26 in this state; or

27 (B) liable for a loss due to motor vehicle theft

28 or motor vehicle insurance fraud. (V.T.I.C. Art. 21.78, Sec. 1.)

29 Source Law

30 Art. 21.78

31 Sec. 1. In this article:

32 (1) "Authorized governmental agency"

33 means:

34 (A) the Department of Public Safety,

35 a police department of any city, town, or village, a

36 county sheriff's department, or any duly constituted

37 criminal investigative department or agency of the

38 United States; or

1 (B) the prosecuting attorney of any
2 city, town, village, judicial district, or county of
3 the state, or of the United States or any judicial
4 district of the United States.

5 (2) "Insurer" means any insurer admitted
6 in this state to write insurance for motor vehicles or
7 otherwise liable for any loss due to motor vehicle
8 theft or motor vehicle insurance fraud.

9 Revisor's Note

10 (1) Section 1, V.T.I.C. Article 21.78, refers to
11 a "city, town, or village." The revised law
12 substitutes the term "municipality" for "city, town,
13 or village" because "municipality" is the term used in
14 the Local Government Code.

15 (2) Section 1, V.T.I.C. Article 21.78, refers to
16 a "duly constituted" criminal investigative
17 department or agency. The revised law omits "duly
18 constituted" as unnecessary. A criminal investigative
19 department or agency is not a department or agency if
20 it is not duly constituted.

21 Revised Law

22 Sec. 702.002. INSURER'S DUTY TO PROVIDE INFORMATION. (a)
23 On the written request of an authorized governmental agency to an
24 insurer, the insurer or an agent authorized by the insurer to act on
25 the insurer's behalf shall release to the agency any relevant
26 information the insurer has that:

27 (1) is requested by the agency; and

28 (2) relates to a specific motor vehicle theft or motor
29 vehicle insurance fraud.

30 (b) In this section, relevant information includes:

31 (1) insurance policy information relevant to the
32 specific motor vehicle theft or motor vehicle insurance fraud under
33 investigation, including any application for the policy;

34 (2) available policy premium payment records;

35 (3) the history of previous claims made by the
36 insured; and

37 (4) information relating to the investigation of the
38 motor vehicle theft or motor vehicle insurance fraud, including

statements of any person, proofs of loss, and notices of loss.
(V.T.I.C. Art. 21.78, Sec. 2(a).)

Source Law

Sec. 2. (a) On written request to any insurer by an authorized governmental agency, the insurer or an agent authorized by an insurer to act on its behalf must release to the authorized governmental agency any relevant information that the authorized governmental agency requests and that the insurer has relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information includes:

(1) insurance policy information relevant to the specific motor vehicle theft or motor vehicle insurance fraud under investigation, including any application for the policy;

(2) policy premium payment records that are available;

(3) history of previous claims made by the insured; and

(4) information relating to the investigation of the motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proofs of loss, and notice of loss.

Revised Law

Sec. 702.003. INSURER'S DUTY TO NOTIFY GOVERNMENTAL AGENCY. (a) An insurer or an agent authorized by an insurer to act on the insurer's behalf shall notify an authorized governmental agency if it:

(1) knows or reasonably believes it knows the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim; or

(2) knows of a criminal fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim that it reasonably believes has not been reported to an authorized governmental agency.

(b) Notice provided under this section to one authorized governmental agency is sufficient notice to each other authorized governmental agency. This subsection does not affect the rights and duties created under Section 702.002. (V.T.I.C. Art. 21.78, Secs. 2(b), (c).)

Source Law

(b) An insurer or an agent authorized by an insurer to act on its behalf shall notify an authorized

1 governmental agency if it:

2 (1) knows or reasonably believes it knows
3 the identity of a person whom it has reason to believe
4 committed a criminal or fraudulent act relating to a
5 motor vehicle theft or motor vehicle insurance claim;
6 or

7 (2) has knowledge of a criminal fraudulent
8 act relating to a motor vehicle theft or motor vehicle
9 insurance claim that is reasonably believed not to
10 have been reported to an authorized governmental
11 agency.

12 (c) Notice to any of the authorized governmental
13 agencies under this section is sufficient notice to
14 all authorized governmental agencies. This subsection
15 does not affect the rights and duties created under
16 Subsection (a) of this section.

17 Revised Law

18 Sec. 702.004. DISCLOSURE OF INFORMATION TO CERTAIN
19 AGENCIES. An authorized governmental agency provided information
20 under Section 702.002 or 702.003 may provide the information to
21 another authorized governmental agency. (V.T.I.C. Art. 21.78, Sec.
22 2(d).)

23 Source Law

24 (d) The authorized governmental agency provided
25 with information under this section may release or
26 provide the information to any other authorized
27 governmental agencies.

28 Revisor's Note

29 Section 2(d), V.T.I.C. Article 21.78, authorizes
30 certain governmental agencies to "release or provide"
31 information to certain other governmental agencies.
32 The revised law omits the reference to "release"
33 because "release" is included within the meaning of
34 "provide."

35 Revised Law

36 Sec. 702.005. INFORMATION PRIVILEGED. (a) Information
37 provided under this chapter is privileged and is not a public
38 record. Except as otherwise provided by law, an entity that
39 receives information provided under this chapter may not release
40 the information to the public.

41 (b) Evidence or information provided under this chapter is
42 not subject to a subpoena ad testificandum or a subpoena duces tecum
43 in a civil or criminal proceeding unless, after reasonable notice

1 to an insurer, agent authorized by an insurer to act on the
2 insurer's behalf, or authorized governmental agency that has an
3 interest in the information and after a hearing, a court determines
4 that obeying the subpoena would not jeopardize the public interest
5 and any ongoing investigation by the insurer, agent, or authorized
6 governmental agency. (V.T.I.C. Art. 21.78, Sec. 3.)

7 Source Law

8 Sec. 3. Any information furnished as provided
9 by this article is privileged and not a part of any
10 public record. Except as otherwise provided by law,
11 any authorized governmental agency, insurer, or an
12 agent authorized by an insurer to act on its behalf
13 that receives any information furnished as provided by
14 this article may not release the information to the
15 public. The evidence or information is not subject to
16 a subpoena ad testificandum or a subpoena duces tecum
17 in a civil or criminal proceeding unless, after
18 reasonable notice to any insurer, an agent authorized
19 by an insurer to act on its behalf, or an authorized
20 governmental agency that has an interest in the
21 information and after a hearing, a court determines
22 that the public interest and any ongoing investigation
23 by the authorized governmental agency, insurer, or an
24 agent authorized by an insurer to act on its behalf
25 will not be jeopardized by obedience to the subpoena.

26 Revised Law

27 Sec. 702.006. IMMUNITY FOR PROVIDING INFORMATION. (a) An
28 insurer or a person who provides information on an insurer's behalf
29 is not liable for damages in a civil action or subject to criminal
30 prosecution for oral or written statements made or any other action
31 taken necessary to provide information as required by this chapter.

32 (b) Subsection (a) does not apply to an insurer or person
33 who acts with malice or fraudulent intent. (V.T.I.C. Art. 21.78,
34 Sec. 4.)

35 Source Law

36 Sec. 4. In the absence of fraud or malice, an
37 insurer or a person who furnishes information on its
38 behalf is not liable for damages in a civil action or
39 subject to criminal prosecution for oral or written
40 statements made or any other action taken necessary to
41 supply information required pursuant to this action.

42 Revisor's Note

43 Section 4, V.T.I.C. Article 21.78, refers to
44 "information required pursuant to this action." The
45 revised law substitutes "information as required by

1 this chapter" for the quoted language because
2 providing information is required by the chapter, not
3 by any action taken by an insurer or other person.

4 CHAPTER 703. COVERED ENTITY'S ANTIFRAUD ACTION

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22 ASSET 542

23 CHAPTER 703. COVERED ENTITY'S ANTIFRAUD ACTION

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Revised Law

26 Sec. 703.001. DEFINITION. In this chapter, "covered
27 entity" means a health maintenance organization or insurer
28 regulated by the department, including:

- 29 (1) a stock life, health, or accident insurance
30 company;
31 (2) a mutual life, health, or accident insurance
32 company;
33 (3) a stock fire or casualty insurance company;
34 (4) a mutual fire or casualty insurance company;

(5) a Mexican casualty insurance company;
(6) a Lloyd's plan;
(7) a reciprocal or interinsurance exchange;
(8) a fraternal benefit society;
(9) a title insurance company;
(10) an attorney's title insurance company;
(11) a stipulated premium company;
(12) a nonprofit legal services corporation;
(13) a statewide mutual assessment company;
(14) a local mutual aid association;
(15) a local mutual burial association;
(16) an association exempt under Section 887.102;
(17) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;
(18) a county mutual insurance company; and
(19) a farm mutual insurance company. (V.T.I.C. Art. 21.79D, Sec. 1(2).)

Source Law

Art. 21.79D
Sec. 1. In this article:

(2) "Insurer" means an insurance company regulated by the board, including any domestic or foreign, stock and mutual life, health, or accident insurance company; domestic or foreign, stock and mutual, fire and casualty insurance company; Mexican casualty company; domestic or foreign Lloyd's plan insurer; domestic or foreign reciprocal or interinsurance exchange; domestic or foreign fraternal benefit society; domestic or foreign title insurance company; attorney's title insurance company; stipulated premium insurance company; nonprofit legal service corporation; statewide mutual assessment company; local mutual aid association; local mutual burial association; an exempt association under Article 14.17 of this code; nonprofit hospital, medical, or dental service corporation including a company subject to Chapter 20 of this code; health maintenance organization; county mutual insurance company; or farm mutual insurance company.

Revisor's Note

(1) Section 1(2), V.T.I.C. Article 21.79D, provides that "insurer" means an insurance company regulated by the board, meaning the Texas Department

1 of Insurance, including certain listed entities. The
2 revised law substitutes "covered entity" for "insurer"
3 because the definition includes a "health maintenance
4 organization," which is not a traditional insurer.
5 Consequently, "covered entity" is a more accurate
6 term. Similar changes necessary to reflect the
7 applicability to a health maintenance organization are
8 made throughout this chapter.

9 (2) Section 1(2), V.T.I.C. Article 21.79D,
10 provides that "insurer" means an insurance company
11 regulated by the board, meaning the Texas Department
12 of Insurance, including certain "domestic or foreign"
13 insurers. The revised law omits the reference to
14 "domestic or foreign" as unnecessary. The authority
15 of the department to regulate domestic and foreign
16 insurers is specified in other provisions of the code
17 and, because the revised law applies to all insurers
18 regulated by the department, it is not necessary to
19 distinguish between domestic and foreign insurers in
20 this section.

21 (3) Section 1(1), V.T.I.C. Article 21.79D,
22 defines "board" to mean the State Board of Insurance.
23 Chapter 685, Acts of the 73rd Legislature, Regular
24 Session, 1993, abolished the board and transferred its
25 functions to the commissioner of insurance and the
26 Texas Department of Insurance. In the context of
27 Article 21.79D, it is appropriate to consider
28 references to the former board as references to the
29 department. For that reason, throughout this chapter,
30 references to the board have been changed to
31 "department" and the definition of "board" is omitted
32 from the revised law. The omitted law reads:

33 (1) "Board" means the State
34 Board of Insurance.

1 Revised Law

2 Sec. 703.002. RIGHT OF INTERVENTION. This chapter does not
3 affect the right of any person, including a state agency, to
4 intervene in an antifraud action brought under this chapter.
5 (V.T.I.C. Art. 21.79D, Sec. 6.)

6 Source Law

7 Sec. 6. This article does not affect the right of
8 any person, including a state agency, to intervene in
9 an antifraud action brought under this article.

10 [Sections 703.003-703.050 reserved for expansion]

11 SUBCHAPTER B. ANTIFRAUD ACTION; CERTIFICATION

12 Revised Law

13 Sec. 703.051. ANTIFRAUD ACTION AUTHORIZED. (a) A covered
14 entity acting alone or through a person, corporation, or legal
15 entity affiliated with the covered entity may bring an action in a
16 court, including a counter-action or cross-action, to:

17 (1) prevent a person from fraudulently engaging in the
18 business of insurance or the business of a health maintenance
19 organization in this state; or

20 (2) redress the effects of a person who has
21 fraudulently engaged in the business of insurance or the business
22 of a health maintenance organization in this state.

23 (b) An action may be brought under this section if:

24 (1) the acts of the person may adversely affect or have
25 adversely affected at least 10 residents of this state; and

26 (2) the department has not brought an antifraud action
27 in a court against the person.

28 (c) An action may be brought under this section regardless
29 of whether the covered entity is directly affected by the person's
30 acts. (V.T.I.C. Art. 21.79D, Sec. 2.)

31 Source Law

32 Sec. 2. An insurer acting alone or by and through
33 any affiliated person, corporation, or legal entity
34 may bring an action, counter-action, or cross-action
35 in a court of competent jurisdiction to prevent a
36 person from fraudulently engaging in the business of
37 insurance in this state or to redress the effects of a
38 person who has fraudulently engaged in the business of

1 insurance in this state, without regard to whether the
2 insurer is directly affected by the actions of the
3 person, if:

4 (1) the acts of the person may adversely
5 affect or have adversely affected at least 10 persons
6 who are citizens of this state; and

7 (2) the board has not commenced a court
8 antifraud action against the person.

9 Revisor's Note

10 (1) Section 2, V.T.I.C. Article 21.79D, refers
11 to certain proceedings in a court "of competent
12 jurisdiction." Throughout this chapter, the revised
13 law omits the quoted language as unnecessary because
14 the general laws of civil jurisdiction determine which
15 courts have jurisdiction over the matter. For
16 example, see Sections 24.007-24.011, Government Code,
17 for the general jurisdiction of district courts.

18 (2) Section 2, V.T.I.C. Article 21.79D, refers
19 to "citizens of this state." The revised law
20 substitutes "resident" for "citizen" because, in
21 context, "citizen" and "resident" are synonymous, and
22 "resident" is more commonly used.

23 Revised Law

24 Sec. 703.052. REQUEST FOR CERTIFICATION. A covered entity
25 may request the court to certify that the action is an antifraud
26 action under this chapter. (V.T.I.C. Art. 21.79D, Sec. 3(a).)

27 Source Law

28 Sec. 3. (a) An insurer may request a court of
29 competent jurisdiction to certify that an action is an
30 antifraud action under this article.

31 Revised Law

32 Sec. 703.053. NOTICE OF REQUEST FOR CERTIFICATION. (a)
33 When a covered entity files a request for certification, the
34 covered entity shall provide at least 10 days' notice of the request
35 to the department and the attorney general by serving each with a
36 copy of the request in the manner provided for service of notice
37 under Rule 21a, Texas Rules of Civil Procedure.

38 (b) The covered entity shall provide the notice regardless
39 of whether the department or the state is a party to the action.

1 (V.T.I.C. Art. 21.79D, Sec. 3(b).)

2 Source Law

3 (b) When the insurer files a request for
4 certification with the court, the insurer shall give
5 at least 10 days notice of the request to the board,
6 and to the attorney general, whether or not the board
7 or the state is a party to the action, by serving the
8 board and the state with a copy of the request for
9 certification of the action by the court in the manner
10 provided for service of notice pursuant to Rule 21a of
11 the Texas Rules of Civil Procedure.

12 Revised Law

13 Sec. 703.054. HEARING ON REQUEST FOR CERTIFICATION. As
14 soon as practicable after a covered entity files a request for
15 certification, the court shall hold a hearing to determine whether
16 the action is an antifraud action under this chapter. (V.T.I.C.
17 Art. 21.79D, Sec. 3(c).)

18 Source Law

19 (c) As soon as practicable after the request by
20 the insurer, the court shall hold a hearing to
21 determine if the action is an antifraud action under
22 this article.

23 Revised Law

24 Sec. 703.055. CERTIFICATION. The court shall certify that
25 the action is an antifraud action if the court determines that:

26 (1) the requirements of Section 703.051 are met; and

27 (2) the pleadings and evidence demonstrate that the
28 covered entity has a probable right of recovery. (V.T.I.C. Art.
29 21.79D, Sec. 3(d).)

30 Source Law

31 (d) The court shall certify that the action is
32 an antifraud action if the court determines that:

33 (1) the requirements of Section 2 of this
34 article for bringing an antifraud action are met; and

35 (2) the pleadings and evidence show that
36 the insurer has a probable right of recovery on the
37 action.

38 [Sections 703.056-703.100 reserved for expansion]

39 SUBCHAPTER C. EXPENSES OF ANTIFRAUD ACTION

40 Revised Law

41 Sec. 703.101. DETERMINATION OF EXPENSES. (a) The court
42 that certifies an action as an antifraud action by order may

1 determine the amount of reasonable and necessary expenses incurred
2 in bringing the action, including court costs, reasonable
3 attorney's fees, witness fees, fees of experts, and deposition
4 expenses.

5 (b) In making the determination, the court may consider the
6 contribution to the action of any person, including a state agency,
7 that has intervened in the action. (V.T.I.C. Art. 21.79D, Sec. 4.)

8 Source Law

9 Sec. 4. (a) A court that certifies that an
10 action is an antifraud action under this article may,
11 from time to time, enter orders that determine the
12 amount of reasonable and necessary expenses, including
13 court costs, reasonable attorney's fees, witness fees,
14 fees of experts, and deposition expenses incurred in
15 bringing the action.

16 (b) In making its determination under
17 Subsection (a) of this section, the court may consider
18 the contribution to the action of any person,
19 including a state agency, that has intervened in the
20 action.

21 Revisor's Note

22 Section 4, V.T.I.C. Article 21.79D, provides that
23 a court may enter certain orders "from time to time."
24 The revised law omits as unnecessary "from time to
25 time" because the power to take an action includes the
26 power to act "from time to time."

27 Revised Law

28 Sec. 703.102. DEDUCTION OR OFFSET FOR EXPENSES;
29 REIMBURSEMENT. (a) Subject to Subsection (b), a covered entity
30 has a deduction or offset against any obligation, assessment, or
31 debt owed by the covered entity to this state in the amount of the
32 reasonable and necessary expenses determined by the court order.

33 (b) The covered entity shall reimburse the state the amount
34 of any expenses actually recovered from the parties to the private
35 antifraud action under a final judgment awarding, wholly or partly,
36 expenses to or for the covered entity's benefit. The amount of
37 reimbursement may not exceed the actual amount of deductions or
38 offsets taken by the covered entity. (V.T.I.C. Art. 21.79D, Sec.
39 5(a) (part).)

1 Source Law

2 Sec. 5. (a) The reasonable and necessary
3 expenses incurred that are determined by orders of the
4 court constitute deductions or offsets against any
5 obligation, assessment, or debt of an insurer owed to
6 the state, provided, the insurer reimburses the state
7 in the amount of any expenses actually recovered from
8 the parties to the private antifraud action under a
9 final judgment awarding, in whole or in part, costs and
10 expenses to or for the benefit of the insurer. The
11 reimbursement may not exceed the actual amounts of
12 deductions or offsets taken by the insurer. . . .

13 Revisor's Note

14 Section 5(a), V.T.I.C. Article 21.79D, refers to
15 "costs and expenses." The revised law omits the
16 reference to "costs" because, in context, the term is
17 included within the meaning of "expenses." See
18 Section 4, V.T.I.C. Article 21.79D, revised as Section
19 703.101 of this chapter.

20 Revised Law

21 Sec. 703.103. ASSIGNMENT OF DEDUCTION OR OFFSET. The
22 covered entity may assign the covered entity's deduction or offset
23 to any other covered entity or reinsurer. (V.T.I.C. Art. 21.79D,
24 Sec. 5(a) (part).)

25 Source Law

26 (a) . . . The insurer may assign the
27 deductions or offsets to any other insurer or
28 reinsurer.

29 Revised Law

30 Sec. 703.104. TREATMENT OF DEDUCTION OR OFFSET AS ADMITTED
31 ASSET. A covered entity or a covered entity's assignee entitled to
32 an offset or deduction that has not been used may show, in the
33 covered entity's or assignee's books and records, the balance of the
34 deduction or offset as an admitted asset for any purpose. (V.T.I.C.
35 Art. 21.79D, Sec. 5(b).)

36 Source Law

37 (b) Until a deduction or offset is taken, the
38 insurer or its assignee entitled to the offset or
39 deduction may reflect the balance of the deduction or
40 offset in its books and records as an admitted asset
41 for any purpose.

Revisor's Note
(End of Chapter)

V.T.I.C. Article 21.79D was enacted by Chapter 1026, Acts of the 71st Legislature, Regular Session, 1989. Section 3 of that act provided that the article applied to certain actions commenced before the effective date of the act. In Durish v. Texas State Board of Insurance, 817 S.W.2d 764 (Tex. App.--Texarkana 1991, no writ), the court of appeals held the article to be void as a violation of the retroactive law prohibition of Section 16, Article I, Texas Constitution. The opinion of the court of appeals does not discuss whether the provision of Chapter 1026 that applied the article retroactively should be treated as severable from the remaining provisions enacted by that act (see Sections 311.032 and 312.013, Government Code). Because the supreme court has not finally determined the constitutionality of Article 21.79D, the article is revised as this chapter.

CHAPTER 704. ANTIFRAUD PROGRAMS

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1 CHAPTER 704. ANTIFRAUD PROGRAMS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Revised Law

4 Sec. 704.001. DEFINITION. In this chapter, "plan issuer"
5 means:

6 (1) a health insurer, including a life, health, and
7 accident insurer, a health and accident insurer, a health
8 maintenance organization, and any other person operating under
9 Chapter 841, 842, 843, 884, 885, 982, or 1501 who is authorized to
10 issue, issue for delivery, or deliver insurance policies,
11 certificates, contracts, or evidences of coverage in this state;

12 (2) an approved nonprofit health corporation that
13 holds a certificate of authority issued under Chapter 844; or

14 (3) an insurer authorized by the department to write
15 workers' compensation insurance in this state. (V.T.I.C. Art.
16 3.97-1, Subdiv. (2).)

17 Source Law

18 Art. 3.97-1. In this subchapter:

19 (2) "Insurer" means:

20 (A) a health insurer, including a
21 life, health, and accident insurer, a health and
22 accident insurer, a health maintenance organization,
23 or any other person operating under the Texas Health
24 Maintenance Organization Act (Chapter 20A, Vernon's
25 Texas Insurance Code) or under Chapter 3, 10, 20, 22,
26 or 26 of this code who is authorized to issue, issue
27 for delivery, or deliver policies, certificates, or
28 contracts of insurance in this state;

29 (B) an approved nonprofit health
30 corporation that:

31 (i) is certified under Section
32 162.001(b), Occupations Code; and

33 (ii) holds a certificate of
34 authority issued by the commissioner under Article
35 21.52F of this code; or

36 (C) an insurer authorized by the
37 department to write workers' compensation insurance in
38 this state.

39 Revisor's Note

40 (1) Subdivision (1), V.T.I.C. Article 3.97-1,
41 defines "health care provider." The revised law omits
42 the definition as unnecessary because the defined term
43 is not used elsewhere in V.T.I.C. Subchapter K,

Chapter 3, revised as this chapter. The omitted definition reads:

(1) "Health care provider" means a person who furnishes services under a license, certificate, registration, or other authority issued by this state or another state to diagnose, prevent, alleviate, or cure a human illness or injury.

(2) Subdivision (2), V.T.I.C. Article 3.97-1, defines "insurer" to include entities such as health maintenance organizations that are not traditional insurers. Consequently, "plan issuer" is a more accurate term than "insurer," and throughout this chapter, the revised law substitutes "plan issuer" for "insurer." In addition, the revised law adds a reference to "evidences of coverage" to the list of documents issued by a plan issuer for clarity because that is the document issued by a health maintenance organization.

(3) Subdivision (2)(A), V.T.I.C. Article 3.97-1, refers to Chapter 3 of the Insurance Code. The relevant portions of Chapter 3, relating to life, health, or accident insurers, are revised in Chapters 841 and 982 of this code. The revised law is drafted accordingly.

(4) Subdivision (2)(B), V.T.I.C. Article 3.97-1, refers to an approved nonprofit health corporation that "is certified under Section 162.001(b), Occupations Code," and holds a certificate of authority "issued by the commissioner under Article 21.52F of this code." The reference to certification under Section 162.001(b), Occupations Code, is unnecessary because V.T.I.C. Article 21.52F, revised as Chapter 844 of this code, requires an approved nonprofit corporation to be certified under Section 162.001, Occupations Code, as a condition of holding a

1 certificate of authority. The reference to the
2 commissioner issuing the certificate of authority is
3 also unnecessary because Article 21.52F, as revised,
4 requires the commissioner to issue the certificate of
5 authority.

6 Revised Law

7 Sec. 704.002. NOTICE RELATING TO FALSE OR FRAUDULENT CLAIMS
8 REQUIRED. (a) A plan issuer who provides a form for a person to
9 make a claim against or to give notice of the person's intent to
10 make a claim against a policy, certificate, contract, or evidence
11 of coverage issued by the issuer must include on the form, in
12 comparative prominence with the other content on the form, a
13 statement that is substantially similar to the following: "Any
14 person who knowingly presents a false or fraudulent claim for the
15 payment of a loss is guilty of a crime and may be subject to fines
16 and confinement in state prison."

17 (b) This section does not apply to a form provided to make a
18 claim against a policy issued by a reinsurer. (V.T.I.C. Art.
19 3.97-2.)

20 Source Law

21 Art. 3.97-2. (a) If an insurer provides a form
22 for a person to use to make a claim against a policy
23 issued by the insurer or to give notice of a person's
24 intent to make a claim against a policy issued by the
25 insurer, the insurer shall provide on that form, in
26 comparative prominence with the other content on the
27 form, a statement substantially similar to the
28 following: "Any person who knowingly presents a false
29 or fraudulent claim for the payment of a loss is guilty
30 of a crime and may be subject to fines and confinement
31 in state prison."

32 (b) This section does not apply to a claim made
33 against a policy issued by a reinsurer.

34 Revisor's Note

35 Section (a), V.T.I.C. Article 3.97-2, refers to a
36 "policy" issued by an insurer. As explained in
37 Revisor's Note (2) to Section 704.001, the revised law
38 substitutes "plan issuer" for "insurer." The revised
39 law also substitutes "policy, certificate, contract,
40 or evidence of coverage" for "policy" to more

1 accurately reflect the documents issued by a plan
2 issuer and for consistency with terminology used in
3 Subdivision (2), V.T.I.C. Article 3.97-1, revised as
4 Section 704.001.

5 [Sections 704.003-704.050 reserved for expansion]

6 SUBCHAPTER B. ANTIFRAUD PLANS

7 Revised Law

8 Sec. 704.051. ANTIFRAUD PLAN REQUIRED FOR CERTAIN PLAN
9 ISSUERS. A plan issuer who collects direct written premium shall
10 adopt an antifraud plan under this subchapter. (V.T.I.C. Art.
11 3.97-3, Sec. (a) (part).)

12 Source Law

13 Art. 3.97-3. (a) An insurer who collects direct
14 written premium shall adopt an antifraud plan under
15 this article. . . .

16 Revised Law

17 Sec. 704.052. ANTIFRAUD PLAN REQUIREMENTS. An antifraud
18 plan adopted by a plan issuer under this subchapter must include a
19 description of the issuer's procedures for:

20 (1) detecting and investigating possible fraudulent
21 insurance acts; and

22 (2) reporting possible fraudulent insurance acts to
23 the insurance fraud unit. (V.T.I.C. Art. 3.97-3, Sec. (a) (part).)

24 Source Law

25 (a) [An insurer who collects direct written
26 premium shall adopt an antifraud plan under this
27 article.] . . . The plan must include:

28 (1) a description of the insurer's
29 procedures for detecting and investigating possible
30 fraudulent insurance acts; and

31 (2) a description of the insurer's
32 procedures for reporting possible fraudulent
33 insurance acts to the insurance fraud unit.

34 Revised Law

35 Sec. 704.053. FILING OF ANTIFRAUD PLAN. A plan issuer may
36 annually file the issuer's antifraud plan adopted under this
37 subchapter with the insurance fraud unit. (V.T.I.C. Art. 3.97-3,
38 Sec. (a) (part).)

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Source Law

(a) [An insurer . . . shall adopt an antifraud plan under this article.] The insurer may annually file that plan with the insurance fraud unit. . . .

Revised Law

Sec. 704.054. FRAUD AND ABUSE PLANS UNDER CERTAIN STATE PROGRAMS; ENFORCEMENT. (a) A fraud and abuse plan put in place by a plan issuer participating in the Medicaid STAR or STAR + Plus program or the child health plan program under Chapter 62, Health and Safety Code, and approved by a health and human services agency meets the requirements of this subchapter.

(b) If a plan issuer described by Subsection (a) is required by law to report possible fraudulent insurance acts to a health and human services agency or the office of the attorney general, the issuer is not required to report those acts to the insurance fraud unit.

(c) The insurance fraud unit, the office of the attorney general, and the health and human services agencies shall coordinate enforcement efforts with respect to fraudulent insurance acts covered by this chapter relating to the Medicaid program or the child health plan program. (V.T.I.C. Art. 3.97-3, Secs. (b), (c).)

Source Law

(b) If an insurer participating in the STAR or STAR + Plus Medicaid program, or the state child health plan under Chapter 62, Health and Safety Code, has in place a fraud and abuse plan approved by a health and human services agency, such plan shall be deemed to meet the requirements of this subchapter. If such insurer is required by law to report possible fraudulent insurance acts to a health and human services agency and/or the Office of Attorney General, such insurer shall not be required to also report such acts to the insurance fraud unit.
(c) The health and human services agencies, the Office of Attorney General, and the insurance fraud unit shall coordinate enforcement efforts relating to acts covered by this subchapter that occur in relation to the state Medicaid program or state child health plan program.

CHAPTER 705. MISREPRESENTATIONS BY POLICYHOLDERS
SUBCHAPTER A. GENERAL PROVISIONS

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7		[Sections 705.006-705.050 reserved for expansion]	
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9	HEALTH INSURANCE POLICIES		
10	Sec. 705.051.	IMMATERIAL MISREPRESENTATION IN LIFE,	
11		ACCIDENT, OR HEALTH INSURANCE APPLICATION. .	554
12		[Sections 705.052-705.100 reserved for expansion]	
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21	CHAPTER 705. MISREPRESENTATIONS BY POLICYHOLDERS		
22	SUBCHAPTER A. GENERAL PROVISIONS		
23	<u>Revised Law</u>		
24	Sec. 705.001.	DEFINITION. In this subchapter, "insurance	
25		policy" means a contract or policy of insurance. (V.T.I.C. Arts.	
26		21.16 (part), 21.17 (part), 21.19 (part).)	
27	<u>Source Law</u>		
28	Art. 21.16.	. . . contract or policy of	
29	insurance		
30	Art. 21.17.	. . . insurance contracts or	
31	policies		
32	Art. 21.19.	. . . contract or policy of	
33	insurance		
34	<u>Revisor's Note</u>		
35	The definition of "insurance policy" is added to		
36	the revised law for drafting convenience and to		

eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 705.002. APPLICABILITY OF SUBCHAPTER. Except as provided by Section 705.005, this subchapter applies to each insurance policy issued or contracted for in this state. (V.T.I.C. Arts. 21.16 (part), 21.17 (part), 21.19 (part).)

Source Law

Art. 21.16. Any . . . policy of insurance issued or contracted for in this State
Art. 21.17. . . . insurance . . . policies . . . issued or contracted for in this State

Art. 21.19. Any . . . policy of insurance issued or contracted for in this State

Revised Law

Sec. 705.003. POLICY PROVISION: MISREPRESENTATION IN PROOF OF LOSS OR DEATH. (a) An insurance policy provision that states that a misrepresentation, including a false statement, made in a proof of loss or death makes the policy void or voidable:

- (1) has no effect; and
- (2) is not a defense in a suit brought on the policy.

(b) Subsection (a) does not apply if it is shown at trial that the misrepresentation:

- (1) was fraudulently made;
- (2) misrepresented a fact material to the question of the insurer's liability under the policy; and
- (3) misled the insurer and caused the insurer to waive or lose a valid defense to the policy. (V.T.I.C. Art. 21.19 (part).)

Source Law

Art. 21.19. Any provision in any . . . policy of insurance . . . which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made and misrepresented a fact material to the question of the liability of the insurance company upon the contract

1 of insurance sued on, and that the insurance company
2 was thereby misled and caused to waive or lose some
3 valid defense to the policy.

4 Revisor's Note

5 V.T.I.C. Article 21.19 refers to
6 "misrepresentations or false statements . . . made in
7 proofs of loss or of death." A false statement is a
8 type of misrepresentation; therefore, the revised law
9 substitutes "misrepresentation, including a false
10 statement" for the quoted phrase.

11 V.T.I.C. Article 21.19 also states that a "false
12 statement . . . misrepresented a fact material to the
13 question of the liability of the insurance company."
14 The revised law similarly substitutes
15 "misrepresentation" for "false statement."

16 Revised Law

17 Sec. 705.004. POLICY PROVISION: MISREPRESENTATION IN
18 POLICY APPLICATION. (a) An insurance policy provision that states
19 that false statements made in the application for the policy or in
20 the policy make the policy void or voidable:

21 (1) has no effect; and

22 (2) is not a defense in a suit brought on the policy.

23 (b) Subsection (a) does not apply if it is shown at trial
24 that the matter misrepresented:

25 (1) was material to the risk; or

26 (2) contributed to the contingency or event on which
27 the policy became due and payable.

28 (c) It is a question of fact whether a misrepresentation
29 made in the application for the policy or in the policy itself was
30 material to the risk or contributed to the contingency or event on
31 which the policy became due and payable. (V.T.I.C. Art. 21.16
32 (part).)

33 Source Law

34 Art. 21.16. Any provision in any . . . policy of
35 insurance . . . which provides that the answers or
36 statements made in the application for such contract
37 or in the contract of insurance, if untrue or false,

1 shall render the contract or policy void or voidable,
2 shall be of no effect, and shall not constitute any
3 defense to any suit brought upon such contract, unless
4 it be shown upon the trial thereof that the matter or
5 thing misrepresented was material to the risk or
6 actually contributed to the contingency or event on
7 which said policy became due and payable, and whether
8 it was material and so contributed in any case shall be
9 a question of fact to be determined by the court or
10 jury trying such case.

11 Revisor's Note

12 (1) V.T.I.C. Article 21.16 refers to "untrue or
13 false" answers or statements. The revised law omits
14 "untrue" as unnecessary because the meaning of
15 "untrue" is included in the meaning of "false."

16 (2) V.T.I.C. Article 21.16 refers to false
17 "answers or statements" made in the application for a
18 policy or in the policy. The revised law omits
19 "answers" as unnecessary because an answer is a type of
20 statement.

21 (3) V.T.I.C. Article 21.16 refers to a "matter
22 or thing misrepresented." The revised law omits "or
23 thing" as unnecessary because the meaning of "thing"
24 is included in the meaning of "matter."

25 (4) V.T.I.C. Article 21.16 states that a matter
26 must have "actually contributed" to a contingency or
27 event. The revised law omits "actually" as
28 unnecessary. "Contributed" means "actually
29 contributed."

30 (5) V.T.I.C. Article 21.16 refers to facts "to
31 be determined by the court or jury trying such case."
32 The revised law omits the quoted language as
33 unnecessary because even without the language, a court
34 or jury, as applicable, would determine a question of
35 fact in a case.

36 Revised Law

37 Sec. 705.005. NOTICE TO INSURED OF
38 MISREPRESENTATIONS. (a) This section applies to any suit brought
39 on an insurance policy issued or contracted for after June 29, 1903.

1 (b) A defendant may use as a defense a misrepresentation
2 made in the application for or in obtaining an insurance policy only
3 if the defendant shows at trial that before the 91st day after the
4 date the defendant discovered the falsity of the representation,
5 the defendant gave notice that the defendant refused to be bound by
6 the policy:

7 (1) to the insured, if living; or

8 (2) to the owners or beneficiaries of the insurance
9 policy, if the insured was deceased.

10 (c) This section does not:

11 (1) make available as a defense an immaterial
12 misrepresentation; or

13 (2) affect the provisions of Section 705.004.
14 (V.T.I.C. Art. 21.17 (part).)

15 Source Law

16 Art. 21.17. In all suits brought upon insurance
17 . . . policies hereafter issued or contracted for
18 . . . , no defense based upon misrepresentations made
19 in the applications for, or in obtaining or securing
20 the said contract, shall be valid, unless the
21 defendant shall show on the trial that, within a
22 reasonable time after discovering the falsity of the
23 representations so made, it gave notice to the
24 assured, if living, or, if dead, to the owners or
25 beneficiaries of said contract, that it refused to be
26 bound by the contract or policy; provided, that ninety
27 days shall be a reasonable time; provided, also, that
28 this article shall not be construed as to render
29 available as a defense any immaterial
30 misrepresentation, nor to in any wise modify or affect
31 Article 21.16 of this code.

32 Revisor's Note

33 (1) V.T.I.C. Article 21.17 refers to policies
34 "hereafter" issued or contracted for. The original
35 text of V.T.I.C. Article 21.17 was enacted by Chapter
36 LXIX, Acts of the 28th Legislature, Regular Session,
37 1903, which took effect on June 30, 1903. The revised
38 law therefore substitutes "after June 29, 1903" for
39 "hereafter."

40 (2) V.T.I.C. Article 21.17 refers to
41 misrepresentations made in "obtaining or securing" an

1 insurance policy. Throughout this chapter, the
2 revised law omits "or securing" because "obtaining"
3 and "securing" are synonymous in this context.

4 (3) V.T.I.C. Article 21.17 uses the term
5 "assured" to mean the person insured under an
6 insurance policy. Throughout this chapter, the
7 revised law substitutes "insured" because the terms
8 are synonymous and "insured" is more commonly used.

9 (4) V.T.I.C. Article 21.17 states that the
10 article may not be used "to in any wise modify or
11 affect Article 21.16." The revised law omits "modify"
12 because its meaning is included in the meaning of
13 "affect."

14 [Sections 705.006-705.050 reserved for expansion]

15 SUBCHAPTER B. SPECIAL PROVISIONS RELATED TO LIFE, ACCIDENT,
16 AND HEALTH INSURANCE POLICIES

17 Revised Law

18 Sec. 705.051. IMMATERIAL MISREPRESENTATION IN LIFE,
19 ACCIDENT, OR HEALTH INSURANCE APPLICATION. A misrepresentation in
20 an application for a life, accident, or health insurance policy
21 does not defeat recovery under the policy unless the
22 misrepresentation:

23 (1) is of a material fact; and

24 (2) affects the risks assumed. (V.T.I.C. Art. 21.18.)

25 Source Law

26 Art. 21.18. No recovery upon any life, accident
27 or health insurance policy shall ever be defeated
28 because of any misrepresentation in the application
29 which is of an immaterial fact and which does not
30 affect the risks assumed.

31 [Sections 705.052-705.100 reserved for expansion]

32 SUBCHAPTER C. SPECIAL PROVISIONS RELATED TO LIFE INSURANCE
33 POLICIES

34 Revised Law

35 Sec. 705.101. DEFINITION. In this subchapter, "insurance
36 policy" means a contract or policy of insurance. (V.T.I.C. Art.

21.35 (part).)

Source Law

Art. 21.35. . . . contract or policy of . . .
insurance

Revisor's Note

The definition of "insurance policy" is added to
the revised law for drafting convenience and to
eliminate frequent, unnecessary repetition of the
substance of the definition.

Revised Law

Sec. 705.102. APPLICABILITY OF SUBCHAPTER. This
subchapter applies to any insurance policy issued or contracted
for in this state. (V.T.I.C. Art. 21.35 (part).)

Source Law

Art. 21.35. . . . every . . . policy of . . .
insurance issued or contracted for in this State
. . . .

Revised Law

Sec. 705.103. DOCUMENTS TO ACCOMPANY POLICY. Except as
otherwise provided by this code, a life insurance policy must be
accompanied by a copy of:

- (1) the policy application; and
- (2) any questions and answers given in connection with
the application. (V.T.I.C. Art. 21.35 (part).)

Source Law

Art. 21.35. Except as otherwise provided in this
code, every contract or policy of life insurance
issued or contracted for in this State shall be
accompanied by a written, photographic or printed copy
of the application for such insurance policy or
contract, as well as a copy of all questions asked and
answers given thereto. . . .

Revisor's Note

V.T.I.C. Article 21.35 refers to a "written,
photographic or printed copy of the application" for
the policy. The revised law omits "written,
photographic or printed" as unnecessary because the
meaning of those words is included in the meaning of

1 "copy."

2 Revised Law

3 Sec. 705.104. MISREPRESENTATION IN APPLICATION FOR LIFE
4 INSURANCE. A defense based on a misrepresentation in the
5 application for, or in obtaining, a life insurance policy on the
6 life of a person in or residing in this state is not valid or
7 enforceable in a suit brought on the policy on or after the second
8 anniversary of the date of issuance of the policy if premiums due on
9 the policy during the two years have been paid to and received by
10 the insurer, unless:

11 (1) the insurer has notified the insured of the
12 insurer's intention to rescind the policy because of the
13 misrepresentation; or

14 (2) it is shown at the trial that the
15 misrepresentation was:

16 (A) material to the risk; and

17 (B) intentionally made. (V.T.I.C. Art. 21.35
18 (part).)

19 Source Law

20 Art. 21.35. . . . provided further, that no
21 defense based upon misrepresentation made in the
22 application for, or in obtaining or securing, any
23 contract of insurance upon the life of any person being
24 or residing in this State shall be valid or enforceable
25 in any suit brought upon such contract two (2) years or
26 more after the date of its issuance, when premiums due
27 on such contract for the said term of two (2) years
28 have been paid to, and received by, the company issuing
29 such contract, without notice to the assured by the
30 company so issuing such contract of its intention to
31 rescind the same on account of misrepresentation so
32 made, unless it shall be shown on the trial that such
33 misrepresentation was material to the risk and
34 intentionally made.

35 Revised Law

36 Sec. 705.105. APPLICABILITY OF OTHER LAW. Subchapter A
37 does not apply to a life insurance policy:

38 (1) that contains a provision making the policy
39 incontestable after two years or less; and

40 (2) on which premiums have been duly paid. (V.T.I.C.
41 Art. 21.35 (part).)

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Source Law

Art. 21.35. . . . The provisions of Articles 21.16, 21.17, and 21.19 of this code shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two (2) years or less, provided premiums are duly paid;

Revisor's Note

V.T.I.C. Article 21.35 refers to a clause making a policy "indisputable." The revised law substitutes "incontestable" for "indisputable" for consistency of terminology in this code and because "incontestable" is the more commonly used modern term.

TITLE 8. HEALTH INSURANCE AND OTHER HEALTH COVERAGES

SUBTITLE A. HEALTH COVERAGE IN GENERAL

- CHAPTER 1201. ACCIDENT AND HEALTH INSURANCE
- CHAPTER 1202. CANCELLATION AND CONTINUATION OF POLICIES
IN GENERAL
- CHAPTER 1203. COORDINATION OF BENEFITS PROVISIONS
- CHAPTER 1204. PROCEDURES FOR PAYMENT OF CERTAIN HEALTH AND
ACCIDENT INSURANCE POLICY OR PLAN BENEFITS
- CHAPTER 1205. CERTIFICATION OF CREDITABLE COVERAGE
- CHAPTER 1206. DENIAL OF HEALTH BENEFIT PLAN ENROLLMENT
BASED ON EXISTING COVERAGE PROHIBITED
- CHAPTER 1207. ENROLLMENT OF MEDICAL ASSISTANCE RECIPIENTS
AND CHILDREN ELIGIBLE FOR STATE CHILD
HEALTH PLAN
- CHAPTER 1208. IDENTITY OF AVAILABLE EMPLOYEE OF HEALTH
BENEFIT PLAN ISSUER
- CHAPTER 1209. HEALTH BENEFIT CLAIMS COST INFORMATION
- CHAPTER 1210. NOTICE OF CERTAIN POLICY PROVISIONS
- [Chapters 1211-1250 reserved for expansion]
- SUBTITLE B. GROUP HEALTH COVERAGE
- CHAPTER 1251. GROUP AND BLANKET HEALTH INSURANCE
- CHAPTER 1252. DISCONTINUATION AND REPLACEMENT OF GROUP
AND GROUP-TYPE HEALTH BENEFIT PLAN COVERAGE